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Supreme Court of the United States

OCTOBER TERM, 1950

No. 302

ARTHUR ST. JOHN, CHESTER WALCZAK, AL FUHRMAN, ET AL., ETC., APPELLANTS,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, ET AL., ETC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FILED SEPTEMBER 11, 1950.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 4844

ARTHUR ST. JOHN, CHESTER WALCZAK, AL FUHRMAN, GORDON DONNELLY, Emil Heimsch, Thomas Lansing, John F. Sheehan, E. F. Regner, Edward P. Regan, La Moine S. Cardinal, Individually, and as officers of Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and Local 18, United Gas, Coke and Chemical Workers of America, (C.I.O.), Plaintiffs,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, J. E. Fitzgibbon and Henry C. Rule, individually and as Commissioners constituting the Wisconsin Employment Relations Board, and Thomas E. Fairchild, individually and as Attorney General of the State of Wisconsin, and the Milwaukee Gas Light Company, a Wisconsin Corporation, Defendants

AMENDED COMPLAINT—Filed October 18, 1949

For their amended complaint, plaintiffs allege that:

1. This is a suit of a Civil nature seeking an injunction and a declaratory judgment, and arises under the Constitution of and the laws of the United States.

2. The jurisdiction of the court is based upon:

(a) The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00) pursuant to Section 1331 of Title 28 of the U. S. C. A.

(b) The suit arises under the United States laws regulating commerce, pursuant to Section 24 (1) (8) Title 28 U. S. C.

(c) Plaintiffs seek to redress the deprivation under color of a state law their right, privilege and immunity secured

by the Constitution of the United States and an act of Con-
[fol. 4] gress, providing for equal rights of citizens or of all persons within the jurisdiction of the United States, pursuant to Section 1343 of Title 28 of the United States Code.

3. The plaintiff, Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and hereinafter referred to as the Union, is an unincorporated association of employees employed in the production, maintenance, operation, construction and meter reading, of approximately seven hundred seventy (770) in number, all of whom are employed with the defendant, Milwaukee Gas Light Company, and that the office of the said Union is in the city of Milwaukee, Milwaukee County, Wisconsin; that it is a labor organization as defined in Section 2 (5) of the Labor Management Relations Act of 1947.

4. The plaintiff, Chester Walzcak, is a citizen of the United States and a resident of the city and county of Milwaukee, Wisconsin, residing at 3350 North Richards Street, and is the International Representative of said Union.

5. The plaintiff, Arthur St. John, is a citizen of the United States, and a resident of Waukesha County, Wisconsin, residing at Route 12, Box 529, and is the President of the said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Five Hundred Dollars ($3500.00).

6. The plaintiff, Al Fuhrman, is a citizen of the United States, and a resident of Milwaukee County, Wisconsin, residing at 6308 Beloit Road, West Allis 14, and is the Vice President of the said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Three Hundred Dollars ($3300.00).

7. The plaintiff, Emil Heimsch, is a citizen of the United States, and a resident of Milwaukee, Wisconsin, residing [fol. 5] at 1054 North 46th Street, and is the Chairman of the Bargaining Committee of the Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Seven Hundred Dollars ($3700.00).

8. The plaintiff, Thomas Lansing, is a citizen of the United States, and a resident of Milwaukee, Wisconsin, residing at 2779 South Superior Street, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Five Hundred Dollars ($3500.00).

9. The plaintiff, John F. Sheehan, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2518 South 11th Street, Milwaukee, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Two Hundred Dollars ($3200.00).

10. That the plaintiff, E. F. Regner, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2371 South 79th Street, West Allis 14, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Three Hundred Dollars ($3300.00).

11. The plaintiff, Edward P. Reagan, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2933 North Cramer Street, and is a member of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand One Hundred Dollars ($3100.00).

12. The plaintiff, La Moine S. Cardinal, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 1435 West Kilbourn Avenue, and is a mem- [fol. 6] ber of the Bargaining Committee of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Thirty Two Hundred Dollars ($3200.00).

13. The plaintiff, Gordon Donnelly, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2134A North 2nd Street, and is the recording secretary of said Union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand One Hundred Dollars ($3100.00).

14. The defendant, L. E. Gooding, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Fond du Lac, Winnebago County, Wisconsin. The defendant, J. E. Fitzgibbon, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Milwaukee, Milwaukee County, Wisconsin. The defendant, Henry C. Rule, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Eau Claire, Eau Claire County, Wisconsin. That all of said defendants constitute the Wisconsin Employment Relations Board, which has offices at 110 East Wisconsin Avenue, Milwaukee, Wisconsin. That said Wisconsin Employment Relations Board is established pursuant to and under the Statutes of the State of Wisconsin, Section 111.03 Wis. Stats. of 1947, and is composed of the aforesaid Commissioners; that said Board has for its duty the enforcement and compliance with Sub-Chapter 3 of Chapter 111 of the Laws of the State of Wisconsin titled "Public Utilities" as set forth in Sections 111.50 through 111.64 Wisconsin Statutes of 1947.

15. The defendant, Thomas E. Fairchild, is the duly [fol. 7] elected, qualified and acting Attorney General of the State of Wisconsin, and as such is charged with the enforcement of the laws of the State of Wisconsin; is a citizen of the United States and is a resident of the city of Madison, Dane County, Wisconsin.

16. That the defendant, Milwaukee Gas Light Company, hereinafter referred to as the defendant company, is a Wisconsin corporation and is a public utility employer with offices located at 606 East Wisconsin Avenue, Milwaukee, Wisconsin, and is primarily engaged in furnishing the following services: Illuminating and heating gas to the general public in the city and county of Milwaukee, Wisconsin. That it is engaged in commerce and trade effecting commerce, as defined in Sections 2 (6) and 2 (7) of the Labor Management Relations Act of 1947.

17. The plaintiffs bring this action on behalf of themselves and all others similarly situated, that is to say, the

members of the Union who are also employees of the defendant company, and are authorized so to do.

18. That the annual earnings of all of such members of the Union as employees of the defendant company is approximately Two Million Three Hundred Ten Thousand Dollars ($2,310,000.00).

19. The members of the Union, including the plaintiffs, have assembled and associated themselves in the said Union for the purpose of collective bargaining and otherwise dealing with the defendant company concerning hours of employment, rates of pay, pensions, working conditions, grievances arising out of employment, and for other mutual aid and protection, and by such means to improve their economic and social conditions as citizens of the United States.

20. The Labor Management Relations Act of 1947, adopted by the Congress, is a law regulating commerce as set forth in Section 101 and Section 204 of the Act as Amended. That since 1937, to August 1st, 1943, the defendant company recognized the plaintiff Union as the [fol. 8] exclusive bargaining representative for all of its employees performing production and maintenance work, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment, and that on August 1st, 1943, the plaintiff union was duly certified by the National Labor Relations Board, acting under the National Labor Relations Act of 1935, as the exclusive bargaining representative for all of the employees of the defendant company in said unit, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment.

21. That commencing with June, 1937, and annually thereafter including June, 1948, the plaintiff union and the defendant company entered into collective bargaining agreements for wages, hours of employment, and other working conditions of all of the employees represented by the said Union.

22. That the most recent of such contracts was entered into between the plaintiff union and defendant company on September 24th, 1948, which by its terms remained in full force and effect until June 1st, 1949, and from year to year thereafter unless terminated by written notice on or before April 1st, of any year; that the plaintiff union terminated

said agreement as of June 1st, 1949, by written notice to the defendant company prior to April 1st, 1949, as required by Section 8 (d) of the Labor Management Relations Act of 1947.

23. That the Federal Mediation and Conciliation Service, acting under the Notice of Termination of Contract, copy of which was submitted to it, intervened and proceeded to assist in the negotiation of a contract for the year 1949-50.

24. That the probable earnings of all of such employees represented by the plaintiff union for a contemplated contract for the year 1949-50 is Two Million Three Hundred Ten Thousand Dollars ($2,310,000.00).

[fol. 9] 25. That on September 19th, 1949, the plaintiff union filed a petition with the National Labor Relations Board, charging the defendant company with having violated Section 8 (a) (5) of the Labor Management Relations Act of 1947, in that it was guilty of an unfair labor practice for having failed and refused to bargain collectively with the plaintiff union, the duly authorized bargaining representative of the majority of the employees in the bargaining unit, and that such petition is now pending before the National Labor Relations Board.

26. Subsequent to the filing of the aforesaid petition with the National Labor Relations Board, defendant company did enter into collective bargaining with the plaintiff union covering wages, pensions, hours and other conditions of employment.

27. That on October 4th, 1949, the plaintiffs, because of the failure of the defendant company to compromise upon and agree to wages, pensions and other working conditions, left the employment of the defendant company individually, in concert, and in agreement with others, and commenced to peacefully picket the company premises.

28. That the defendant, Wisconsin Employment Relations Board, acting under the purported authority of Section 111.63 Wisconsin Statutes 1947, secured an injunction from the Circuit Court of Milwaukee County, restraining the plaintiffs from leaving their place of employment in concert or in agreement with others, and from picketing or otherwise violating the provisions of subchapter 3, chapter 111 of the Wisconsin Statutes of 1947.

That the Circuit Court of Milwaukee County had no jurisdiction of the subject matter of this suit, in which said restraining order was issued, for the reason that sub-chapter 3, Chapter 111, of the Wisconsin Statutes of 1947, is in direct conflict with the United States Labor-Management Act of 1947, and the declared public policy of the United States.

29. The defendant Attorney General, together with the [fol. 10] defendant Wisconsin Employment Relations Board, has since caused the issuance of process to punish the plaintiffs and other employees of the defendant company for whom this action is brought, for allegedly violating the injunction of the Circuit Court and sub-chapter 3, Chapter 111 of the Wisconsin Statutes of 1947; that unless the relief prayed for herein is granted by this court the plaintiffs and others for whom they are authorized to act, will be subjected to fines or imprisonment, or both.

30. The defendant Attorney General of the State of Wisconsin, acting through the District Attorney of Milwaukee County, unless the relief prayed for herein is granted by this court, threatens to invoke the criminal penalties prescribed by the said Section 111.62 of sub-chapter 3, Chapter 111 of the Wisconsin Statutes of 1947, against the plaintiffs and others for whom said plaintiffs are authorized to act, and that said threatened action by the defendant Attorney General is unlawful for the reason that such action is repugnant to the Constitution and laws of the United States.

31. That on October 6th, 1949, plaintiff union and the defendant company agreed upon wages, hours and other conditions of employment, but have not agreed on the exact terms and conditions of the pension plan for the employees of the defendant company for whom the plaintiff union is authorized to bargain; that the defendant company threatens to invoke Section 111.55 and other provisions of Subchapter 3, Chapter 111 Wisconsin Statutes of 1947, to compel the plaintiffs to agree to a pension plan as may be determined by a board of arbitrators provided for in said Statutes.

32. That the defendants, L. E. Gooding, J. E. Fitzgibbons and Henry C. Rule, as the Wisconsin Employment Relations Board, and the defendant Thomas E. Fairchild as the

Attorney General, threaten to compel the plaintiffs to sub-
[fol. 11] mit the unresolved issue of pensions involved in the negotiations, to arbitration, and to accept and abide by the result of such arbitration under penalty of confinement in the common jail.

33. That on the 28th day of September, 1949, the defendant company filed with the Wisconsin Employment Relations Board, a petition, a copy of which is herewith attached and marked Exhibit "A" and made part of this amended complaint.

34. That on October 3rd, 1949, the defendant, Wisconsin Employment Relations Board, issued an order, a copy of of which is attached hereto and marked Exhibit "B", directing the plaintiffs to choose arbitrators as provided in sub-chapter 3, Chapter 111 of Wisconsin Statutes of 1947, and that such order issued under the purported authority of the Wisconsin Statutes has not been revoked, and remains as threatened by the Wisconsin Employment Relations Board, binding upon the plaintiffs.

35. That the order, and threatened action of both the defendant Wisconsin Employment Relations Board and the Attorney General are all in conflict with the United States Labor-Management Relations Act of 1947, and is repugnant to the Constitution of the United States.

36. That the Wisconsin Employment Relations Board and the defendant company claim to act under authority of sub-chapter 3 of Chapter 111 of the Laws of the State of Wisconsin, 1947, the material parts of which are as follows:

> "111.55. Conciliator unable to effect settlement; appointment of arbitrators. If the conciliator so named is unable to effect a settlement of such dispute within a 15-day period after his appointment, he shall report such fact to the board; and the board, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 3 or 5 persons from the panel provided for in section 111.53. Each party shall alternately strike one name from such list of persons. The person or persons left on the list shall be appointed by the board as the arbitrator (or arbitrators) to hear and determine such dispute."

[fol. 12] "111.56. Status quo to be maintained. During the pendency of proceedings under this subchapter existing wages, hours, and conditions of employment shall not be changed by action by either party without the consent of the other."

"111.62. Strikes, work stoppages, slowdowns, lockouts, unlawful; penalty. It shall be unlawful for any group of employes of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other person or persons, to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer, or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor."

"111.63. Enforcement. The board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. In any such action the provisions of sections 103.51 to 103.63 shall not apply."

37. That the aforesaid provisions of the laws of the State of Wisconsin are in direct conflict with the Labor Management Relations Act of 1947, in that such Wisconsin Acts deny plaintiffs the right to bargain collectively, but compels them to accept a contract drawn by strangers to them, and without their consent or approval.

38. That the threatened act of the defendants to compel the plaintiffs to accept a contract drawn by strangers to them deprives them of their fundamental constitutional right to make and enter into their own labor agreement covering wages, hours and other conditions of employment.

39. That under the Labor Management Relations Act of 1947, and under the Constitution of the United States, the plaintiffs, should they fail in negotiating a labor con-[fol. 13] tract with the defendant company, have the right to leave their place of employment, either individually or in concert, but under Section 111.62 it is unlawful for the plaintiffs to leave their place of employment, should they fail to reach an agreement with the defendant company, in concert or in agreement with others under penalty of confinement in the common jail.

40. That it is therefore essential in the judgment of the plaintiffs that they exercise their rights as citizens, including the right to enter into a collective bargaining agreement without restraint, coercion or compulsion on the part of the defendants, and including the right of free speech and assembly and petition, and the right to leave their place of employment individually, in concert or in agreement with others, should they fail to enter into a collective bargaining agreement with the defendant company.

41. That the plaintiffs seek to enjoin and perpetually restrain the defendants:

(a) from interfering with the plaintiffs' right, privilege and immunity secured to them by the Constitution of the United States and the Labor Management Relations Act of 1947; from entering into a contract or agreement with the defendant company on the issue of pensions, or any other negotiable issue voluntarily, and in the absence of that, from leaving their place of employment individually, in concert or in agreement with others;

(b) from taking any steps, issue any process in the Circuit Court of Milwaukee County which seeks to impose a penalty by way of fine or imprisonment or both, upon the plaintiffs or others similarly situated, for allegedly violating the restraining order of the Circuit Court of Milwaukee County issued on October 5th, 1949;

(c) from taking any steps, signing any complaint, issuing [fol. 14] any warrant, or threatening to do any such acts, which have for their purpose the arrest or punishment of the plaintiffs by fine or imprisonment, or to otherwise enforce the penalties of sub-chapter 3, Chapter 111 of the Wisconsin Statutes of 1947.

42. For all of the aforesaid reasons there is a real and justiciable case and an actual controversy between these plaintiffs and the defendants; the defendant Wisconsin Employment Relations Board and its Commissioners, and the defendant Attorney General, in threatening to enforce an unconstitutional and void statute, are acting outside their authority as officers of the State of Wisconsin; plaintiffs have no adequate or timely remedy at law and they will suffer irreparable injury, and that unless the relief herein prayed for is granted they will be in jeopardy and will be forced to defend many criminal prosecutions and other proceedings in court, and will be forced to expend large sums of money in defending such suits and the hazards of fines and imprisonments upon the plaintiffs and other similarly situated; that plaintiffs are and will thereby be deprived of their rights under the constitution and the laws of the United States, to enjoy the rights of free citizens of the United States.

43. This suit for a declaratory judgment and injunction offers plaintiffs the only remedy to secure an adjudication of the validity of sub-chapter 3, Chapter 111 of Wisconsin Statutes of 1947 in time to exercise their rights as citizens of the United States.

44. That the threatened acts of the defendants, and the laws under which they seek to impose such acts, unlawfully restrict and abridge the civil rights of the plaintiffs by denying them the freedom of speech and the right of peaceful assembly and petition; unlawfully limits their freedom to join in a labor organization, and to make effective use of any joint action on their part, and thereby deprives them [fol. 15] of their liberty and their property without due process of law; unlawfully prevents them from entering into contracts of employment by their own act and thereby prohibits them from the right of contract; unlawfully and arbitrarily discriminates against the plaintiffs by reason that they are employees of a public utility and prohibits them from using their joint efforts in arriving at a voluntary labor contract covering their wages, hours, and other conditions of employment, and thereby deprives them of the equal protection of the law as citizens of the United States, and that such classification is arbitrary, grossly discriminatory, invidious, and is repugnant to the Constitution of the United States; unlawfully invades the rights and liber-

ties of the plaintiffs by seeking to compel them to remain at their place of employment, and that such acts are in violation and repugnant to the laws and Constitution of the United States.

Wherefore plaintiffs pray that:

(a) The defendants be directed full, true and perfect answer to make to this complaint.

(b) A three judge court be convened pursuant to the provisions of Title 18, U. S. Code, Section 380.

(c) The defendants and each of them, be restrained and enjoined from taking any action or proceeding, make any threat to take any action or proceeding, to compel the plaintiffs to submit to arbitration, or to enter into a labor contract on any negotiable issue, against their will and judgment, or petition any court of record or file any complaint seeking to compel the plaintiffs to submit to arbitration; or take any steps or file any complaint, or pursue any proceeding which would seek to punish the plaintiffs for allegedly violating any court order issued under the purported authority of sub-chapter 3, Chapter 111 of Wisconsin Statutes, 1947; or to take any steps, file any complaint, issue any warrant or other process, or threaten to [fol. 16] do so, seeking to arrest or otherwise punish by fine or imprisonment, the plaintiffs or others for whom they are authorized to act, for allegedly violating any of the provisions of sub-chapter 3, Chapter 111, Wisconsin Statutes of 1947.

(d) That the court issue a permanent injunction enjoining and restraining the defendants and their agents from taking steps to enforce the penalities of sub-chapter 3, Chapter 111 of Wisconsin Statutes of 1947, or other provisions thereof, which interfere with the rights of the plaintiffs as citizens of the United States, and which are in conflict with the laws of the United States and the Constitution of the United States.

(e) This court issue a judgment declaring that the provisions of sub-chapter 3, Chapter 111 of the Wisconsin Statutes of 1947, insofar as they may be applied to penalize these plaintiffs and others for whom they are authorized to act, to compel them to submit to arbitration on any negotiable issue or which has for its purpose the punishment of the plaintiffs for having left their place of emplo-

ment in concert or in agreement with others, or for having picketed the defendant company's premises, are void, illegal, unenforceable and repugnant to the United States Labor-Management Relations Act of 1947, and to the Constitution of the United States.

(f) The plaintiffs have such other and further relief as to the court may seem just and equitable.

(S.) Max Raskin, Attorney for Plaintiffs, Suite 1801, Wisconsin Tower, 606 W. Wisconsin Avenue, Milwaukee, Wisconsin.

[fol. 17] *Duly sworn to by Chester Walczak. Jurat omitted in printing.*

[fol. 18] EXHIBIT "A" TO AMENDED COMPLAINT

State of Wisconsin

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PETITION OF MILWAUKEE GAS LIGHT COMPANY for appointment of a Conciliator pursuant to Section 111.54 of the Wisconsin Statutes for 1947

The petition of Milwaukee Gas Light Company represents and shows as follows:

1. The petitioner, Milwaukee Gas Light Company, is a Wisconsin corporation and is a public utility employer within the meaning of Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947; and its principal office is located at 606 East Wisconsin Avenue, Milwaukee 2, Wisconsin.

2. The petitioner is primarily engaged in furnishing essential service within the meaning of Section 111.51 of the Wisconsin Statutes for 1947, to-wit, illuminating and heating gas to the general public in the City and County of Milwaukee, Wisconsin.

3. Petitioner employs a total of approximately One Thousand Three Hundred Ten (1,310) employees. Approximately Seven Hundred Seventy (770) employees of the petitioner, engaged in production, maintenance, operation, construction and meter reading, constitute a separate collective bargaining unit, and are represented for collective bargaining purposes by a labor organization, to-wit, Local

18, United Gas, Coke and Chemical Workers of America (CIO), hereinafter referred to as the "Union".

4. Petitioner and said union executed a Labor Agreement of September 24, 1948, which by its terms remained in full force and effect until June 1, 1949, and from year to year [fol. 19] thereafter unless terminated by written notice on or before April first of any year; and the Union terminated said agreement as of June 1, 1949, by written notice to the Company prior to April 1, 1949.

5. Petitioner has attempted in good faith to negotiate the terms of a labor agreement with the Union but has not been able to reach an agreement with the Union, although John E. Roe, Madison, Wisconsin, was appointed as Conciliator by order of the Wisconsin Employment Relations Board, dated September 14, 1949, and participated in several meetings between petitioner and the Union; and petitioner believes said collective bargaining negotiations have reached an impasse and stalemate and that said parties will be unable to effect settlement of said dispute without the intervention, aid and assistance of the conciliation and/or arbitration processes and procedures provided for in Sections 111.50 through 111.65 of the Wisconsin Statutes for 1947.

6. Petitioner is informed and believes that said dispute if not settled will cause or is likely to cause an interruption of said essential service, to-wit; the furnishing of illuminating and heating gas to residents of the City and County of Milwaukee, Wisconsin.

Wherefore, your petitioner requests that pursuant to Section 111.54 of the Wisconsin Statutes for 1947, the Wisconsin Employment Relations Board reappoint said John E. Roe, or appoint such other person as it may select, as conciliator to meet with said parties for the purposes set forth in Sections 111.54 and 111.55 of the Wisconsin Statutes for 1947.

Dated at Milwaukee, Wisconsin, this 28th day of September, 1949.

Milwaukee Gas Light Company, by Glenn R. Chamberlain, President.

[fol. 20] *Duly sworn to by Glenn R. Chamberlain. Jurat omitted in printing.*

[fol. 21] EXHIBIT "B" TO AMENDED COMPLAINT

State of Wisconsin

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Dispute Between the
MILWAUKEE GAS LIGHT COMPANY

and

UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, LOCAL 18, affiliated with the Congress of Industrial Organizations

ORDER APPOINTING ARBITRATORS

The Wisconsin Employment Relations Board having heretofore and on the 14th day of September, 1949, upon its own motion appointed John E. Roe of Madison, Wisconsin, as conciliator pursuant to Section 111.54 of the Wisconsin Statutes for the purpose of attempting to settle a dispute existing between the employes of the Milwaukee Gas Light Company represented by the United Gas, Coke & Chemical Workers of America, Local No. 18, affiliated with the Congress of Industrial Organizations, and that the Company and the said John E. Roe having on the 3rd day of October, 1949, reported to the Board that the dispute between the parties continues to exist, and from such report it appearing that a continuation of the dispute will cause or is likely to cause the interruption of the essential service:

Now, Therefore, it is

Ordered

That pursuant to Section 111.55 of the Wisconsin Statutes the following named persons, all of whom have qualified as arbitrators under the provisions of Section 111.53 of the Wisconsin Statutes, be submitted to the parties as the persons from which the board of arbitration to determine such dispute shall be elected, to-wit: Nathan P. Feinsinger, [fol. 22] Madison, Wisconsin; Herman Runge, Sheboygan, Wisconsin; Carl J. Ludwig, Milwaukee, Wisconsin; Milton LaPour, Racine, Wisconsin; and Carl Rix, Milwaukee, Wisconsin.

It is further ordered that the representatives of the Milwaukee Gas Light Company and the United Gas, Coke & Chemical Workers of America, Local No. 18, affiliated with

the Congress of Industrial Organizations meet at the Court House in the City of Milwaukee, County of Milwaukee, Wisconsin, on Friday, October 7, 1949, at 10:00 o'clock in the forenoon, at which time each party may strike the name of one person from the list of names submitted above. The remaining three persons will be designated by the Board as the Board of Arbitration to which will be submitted the issues in dispute between the parties.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of October, 1949.

Wisconsin Employment Relations Board, by (S.) L. E. Gooding, Chairman; J. E. Fitzgibbon, Commissioner; Henry C. Rule, Commissioner.

[fol. 23] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ORDER TO SHOW CAUSE—Filed October 4, 1949

Upon the affidavit hereto attached, the verified complaint, and upon motion of Max Raskin, attorney for the plaintiffs,

It is ordered that the defendants show cause, if any they have, on the 6th day of October, 1949, at 3:00 o'clock P. M. or as soon thereafter as counsel can be heard, in the United States District Court for the Eastern District of Wisconsin, in the Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin, why the defendants, and each of them, should not be restrained and enjoined from taking any action or proceeding, or make any threats to take any action or proceeding, which has for its purpose the compelling of plaintiffs to submit to arbitration or to enter into a labor contract against their will and judgment, or to petition any court of record or file any complaint seeking to compel [fol. 24] the plaintiffs to submit to arbitration, or to take any steps or file any complaint, or pursue any proceeding which will seek to keep the plaintiffs at their place of employment under penalty of confinement in the common jail.

Let a copy of this verified complaint, affidavit and order to show cause be served upon the said defendants at least 24 hours before the return day thereof.

Robert E. Tehan, Judge of the U. S. District Court.

Dated at Milwaukee, Wisconsin. October 4, 1949.

[fol. 25] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ANSWER—Filed October 28, 1949

For answer to the amended complaint in the above entitled action, the Milwaukee Gas Light Company, one of the defendants therein, by its attorneys:

1. Admits the allegations contained and set forth in paragraphs 1 to 16, inclusive, of said amended complaint.

2. Admits the allegations contained and set forth in paragraph 17 of said amended complaint, except that it alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averment that the plaintiffs are authorized to bring this action.

3. Admits the allegations contained and set forth in para-
[fol. 26] graphs 18 to 26, inclusive, of said amended complaint.

4. Denies that the action of the plaintiffs referred to in paragraph 27 of said amended complaint was due to or caused by any failure of this defendant to compromise upon or agree to wages, pensions and other working conditions; and denies that the picketing referred to in said paragraph of said amended complaint was peaceful picketing.

5. With reference to paragraph 28 of said amended complaint, admits that on October 13, 1949, in an action commenced in the Circuit Court for Milwaukee County on or about October 5, 1949, in which the Wisconsin Employment Relations Board was plaintiff and this answering defendant,

Glenn R. Chamberlain, its President, Bernard T. Franck, its Vice-President, and Paul J. Imse, its Secretary and Treasurer, the plaintiff Union herein, and the plaintiffs Arthur St. John, Chester Walczak and Thomas Lansing herein were defendants, an order was entered by said Circuit Court for Milwaukee County, Wisconsin, under which the said Union, the said Arthur St. John, and said Chester Walczak, and the said Thomas Lansing were enjoined to desist and refrain from calling a strike or going out on a strike, or causing any work stoppage or slowdown which would cause an interruption in the service of this defendant, or of a certain corporation known as Milwaukee Solvay Coke Company, from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service, and from picketing, or causing to be picketed, the premises of said Milwaukee Solvay Coke Company, and ordering said defendant Union and said defendants Arthur St. John, Ches- [fol. 27] ter Walczak and Thomas Lansing to take immediate steps to notify all employees called out on strike to resume further service; and in all other respects denies the allegations contained in the first sentence in said paragraph 28 of said amended complaint; and denies that the Circuit Court for Milwaukee County had no jurisdiction of the subject matter of the suit in which such restraining order was issued; and denies that Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947 is in conflict with the United States Labor-Management Act of 1947, or with the declared public policy of the United States.

6. With respect to paragraph 29 of said amended complaint, this defendant admits that an order has been issued by said Circuit Court for Milwaukee County requiring the plaintiffs herein and certain other employees of this defendant to show cause why they should not be punished for violating the injunctional order referred to in paragraph 5 of this answer.

7. With respect to paragraph 30 of said amended complaint, admits on information and belief that the defendant Attorney General of the State of Wisconsin will invoke whatever penalties are prescribed under Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947; and denies that any threatened action on behalf of said defendant Attorney General in that connection is unlawful; and

denies that such action is repugnant to the Constitution or laws of the United States.

8. With respect to paragraph 31 of said amended complaint, this defendant denies that it has threatened to invoke any of the provisions of Chapter 111 of the Wisconsin Statutes of 1947; but admits that it will, if need be, invoke any of the remedial provisions of said Chapter 111; and denies that it seeks to compel the plaintiffs to agree to any pension [fol. 28] plan; but admits that if an impasse or stalemate should arise in negotiations between it and said Union with reference to a pension plan, it will, if need be, invoke the provisions of said Subchapter III of said Chapter 111 with reference to the appointment of arbitrators.

9. With respect to paragraph 32 of said amended complaint, admits that the defendants L. E. Gooding, J. E. Fitzgibbon, Henry C. Rule and Thomas E. Fairchild will take whatever steps are warranted by law under said Chapter 111 of the Wisconsin Statutes of 1947 with reference to the submission of any unresolved issue to arbitration; but alleges that it has no knowledge or information sufficient to form a belief as to what action may be demanded by them with reference to confinement in jail.

10. Admits the allegations contained and set forth in paragraph 33 of said amended complaint.

11. Admits the allegations contained and set forth in paragraph 34 of said amended complaint.

12. Denies that the order, or the threatened action referred to in paragraph 35 of said amended complaint, is or are in conflict with the United States Labor-Management Relations Act of 1947, or repugnant to the Constitution of the United States.

13. Admits the allegations contained and set forth in paragraph 36 of said amended complaint.

14. Denies the allegations contained and set forth in paragraph 37 of said amended complaint.

15. Denies the allegations contained and set forth in paragraph 38 of said amended complaint.

16. Denies the allegations contained and set forth in [fol. 29] paragraph 39 of said amended complaint.

17. Denies the allegations contained and set forth in paragraph 40 of said amended complaint.

18. Admits the allegations contained and set forth in paragraph 41 of said amended complaint.

19. With reference to paragraph 42 of said amended complaint, denies that there is a real and justiciable case or an actual controversy between the plaintiffs and the defendants for the reason that said controversy has been submitted by and on behalf of the plaintiffs to and determined by the Circuit Court for Milwaukee County in an action commenced therein, the judgment in which action is *res judicata* against the plaintiffs in this action, as more particularly appears by paragraph 22 of this answer. Denies that the defendant Board or the defendant Attorney General are threatening to enforce an Act which is unconstitutional or void, or are acting outside their authority as officers of the State of Wisconsin; denies that the plaintiffs have no adequate or timely remedy at law; and, on the contrary, alleges that the plaintiffs have already invoked the jurisdiction of and obtained a judgment in the Circuit Court for Milwaukee County, Wisconsin, which is conclusive against them, as hereinafter stated; and denies that the plaintiffs are being or will be deprived of any rights under the Constitution or the laws of the United States, or the enjoyment of the rights of free citizens of the United States.

20. With reference to paragraph 43 of said amended complaint, denies that this suit offers the plaintiffs the only [fol. 30] remedy to secure an adjudication of the validity of Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947 in time to exercise their rights as citizens of the United States; and, on the contrary, alleges that before the commencement of this action they invoked the jurisdiction of the Circuit Court for Milwaukee County in an action for a declaratory judgment and injunction in which action it was adjudged that they were not entitled to the relief asked, and that such judgment is *res judicata* as to the claims asserted in this action.

21. With reference to paragraph 44 of said amended complaint, denies that the civil rights of the plaintiffs have been or are being restricted or abridged, or that they are being denied the freedom of speech, or the right of peaceful assembly and petition; and denies that any act of

the defendants limits the freedom of any of the plaintiffs, or the persons whom they represent, to join in a labor organization, or to make effective use of any joint action on their part, or deprives them of their liberty or their property without due process of law, or prevents them from entering into contracts of employment by their own acts, or prohibits them from the right of contract, or discriminates against them by reason of their being employees of a public utility, or prohibits them from using their joint efforts in arriving at a voluntary labor contract covering their wages, hours or other conditions of employment, or deprives them of the equal protection of the law; and denies that any such classification as is referred to in said paragraph is arbitrary, discriminatory, invidious or repugnant to the Constitution of the United States, or unlawfully invades their rights or liberties by seeking to compel them to remain at their place of employment, or otherwise, or that such acts are in violation of or repugnant to the laws or Constitution of the United States.

[fol. 31] 22. Further answering said amended complaint, this defendant alleges the facts set forth in this paragraph and the sub-paragraphs thereof.

(a) On or about September 3, 1948, the plaintiff Local 18, United Gas, Coke & Chemical Workers of America commenced an action in the Circuit Court for Milwaukee County, Wisconsin as plaintiff against the Wisconsin Employment Relations Board and the Milwaukee Gas Light Company, two of the defendants in the above entitled action, praying the court to determine and declare the rights of the parties, and to declare Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947 unconstitutional and invalid, and to give such further relief by way of declaration of the rights of the parties as might be lawful, just and proper.

(b) On or about October 13, 1948, the summons in said action so commenced in the Circuit Court for Milwaukee County was amended by adding thereto as one of the plaintiffs, Thomas Lansing, who is one of the plaintiffs in this action.

(c) At the same time an amended complaint was served therein, a copy of which amended complaint is hereunto annexed, marked Exhibit "A" and made part hereof as fully as if the same were herein set forth at length. As

appears by said amended complaint, said plaintiff Union brought said action as the representative of the employees of the defendant Milwaukee Gas Light Company, being specifically authorized so to do; and that it was therein alleged that said Thomas Lansing had, through many years, built up a property right in his employment commonly known as "seniority," and it was therein charged that Sections 111.62 and 111.63 of said Chapter 111 of the Wisconsin Statutes of 1947 threatened to destroy said prop-
[fol. 32] erty right by denying him the full protection of the law.

(d) On November 1, 1948, the defendant Milwaukee Gas Light Company interposed in said action a demurrer which, omitting venue, title and signature, reads as follows:

> "Now comes the Milwaukee Gas Light Company, one of the defendants in the above entitled action, by Miller, Mack & Fairchild, its attorneys, and demurs to the amended complaint therein on the ground that it appears on the face of said amended complaint that the same does not state facts sufficient to constitute a cause of action."

(e) On or about October 29, 1948, the defendant Wisconsin Employment Relations Board interposed in said action a demurrer which, omitting venue, title and signature, reads as follows:

> "Now comes the Wisconsin Employment Relations Board one of the respondents above named by its attorneys Grover L. Broadfoot, Attorney General Stewart G. Honeck, Deputy Attorney General and Beatrice Lampert, Assistant Attorney General and demurs to the amended complaint in the above entitled action on the grounds that it appears on the face of said amended complaint that the same does not state facts sufficient to constitute a cause of action."

(f) Said action was brought to trial on the issues of law raised by the separate demurrers of the defendants therein to said amended complaint, and was heard on the 22nd and 26th days of November, 1948, all of the parties to said action having been represented in court by their respective counsel.

(g) On January 6, 1949, the said Circuit Court for Milwaukee County, Wisconsin, being of the opinion that

Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947 was a valid act, and not in violation of nor in conflict with any provision of the Constitution of the State of Wisconsin, nor of the Constitution of the United States, nor of any amendment thereto, and not in conflict with the United States Labor-Management Relations Act of 1947, and being further of the opinion and having determined that any further amendment of said amended complaint [fol. 33] would be unavailing, ordered that said demurrers to the amended complaint in said action be sustained, and that judgment be entered declaring the rights of the parties, and denying the prayer of the plaintiffs for further relief.

(h) On January 6, 1949, said Circuit Court for Milwaukee County, Wisconsin, entered a judgment determining that said Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947 was a valid and constitutional act; that it did not violate nor conflict with any of the provisions of the Constitution of the State of Wisconsin, nor with any of the provisions of the Constitution of the United States, nor with any amendments thereto; and did not conflict with the United States Labor-Management Relations Act of 1947; and did not deny to the plaintiffs nor to any of the employees of the defendant Milwaukee Gas Light Company represented by them, and did not deprive them of any rights, privileges or protection secured to them under either of said constitutions or of said act of Congress; and that the plaintiffs in said action, the defendant Milwaukee Gas Light Company, and its employees represented by the plaintiffs therein, were subject to and controlled by said Subchapter III of Chapter 111 of the Wisconsin Statutes of 1947; and further adjudged that the prayer of the plaintiffs in said action for further relief be and the same was thereby denied. A true copy of said judgment, marked Exhibit "B", is hereunto annexed and made part hereof as fully as if herein set forth at length.

(i) An appeal was taken from the judgment so entered on January 6, 1949 by the plaintiffs in said action to the Supreme Court of the State of Wisconsin; that thereafter such proceedings were had in said Supreme Court of the State of Wisconsin that said judgment of said Circuit [fol. 34] Court for Milwaukee County was affirmed, such judgment of affirmance having been entered on July 12,

1949; and that the remittitur from said Supreme Court was returned to and filed in the office of the Clerk of the Circuit Court for Milwaukee County, Wisconsin, with no accompanying opinion, declaring that, on consideration of the appeal, it was order- and adjudged by said Supreme Court that the judgment of said Circuit Court of Milwaukee County be and the same was affirmed.

(j) No application by appeal, writ of error, certiorari or otherwise to have said judgment reviewed by the Supreme Court of the United States of America has been made.

(k) The said judgment of the Circuit Court for Milwaukee County so affirmed by the Supreme Court of the State of Wisconsin is a final judgment, and is conclusive upon the plaintiffs in this action, and is *res judicata* as to all the issues presented in this action, and as to all relief now sought in this action.

Wherefore, the defendant Milwaukee Gas Light Company prays judgment dismissing the amended complaint, and for its costs and disbursements herein.

J. G. Hardgrove, Vernon A. Swanson.

Miller, Mack & Fairchild, Of Counsel.

[fol. 35] *Duly sworn to by Bernard T. Franck. Jurat omitted in printing.*

[fol. 36] EXHIBIT "A" TO ANSWER

STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

Case No. 216361

UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, LOCAL 18, affiliated with the C.I.O., and THOMAS LANSING, Plaintiffs,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD and MILWAUKEE GAS LIGHT COMPANY, a Corporation, Defendants

AMENDED COMPLAINT

Now comes the plaintiffs above named, by Max Raskin, their attorney, and for a cause of action against the above named defendants allege and show unto the court as follows:

1. That the plaintiff, United Gas, Coke & Chemical Workers of America, Local 18, affiliated with the C.I.O., is a voluntary labor organization, organized and existing for the purpose of representing employees in matters affecting wages, hours and other conditions of employment and otherwise to engage in collective bargaining for and on behalf of employees with their employer, and brings this action as the representative of the employees of the defendant Milwaukee Gas Light Company, being specifically authorized so to do.

2. That the plaintiff, Thomas Lansing, for many years past, has been and now is an employee of the defendant, Milwaukee Gas Light Company.

3. That the defendant, Milwaukee Gas Light Company, hereinafter referred to as the employer, is a public utility corporation organized under the laws of the State of Wisconsin, and is engaged in the business of furnishing essential service such as light, heat and gas to the public in the state of Wisconsin.

[fol. 37] 4. That the Wisconsin Employment Relations Board, hereinafter referred to as the Board, is created pursuant to Chapter 111 of the Laws of 1947 and is charged with the enforcement of Section 111.62 of the Wisconsin Statutes.

5. That the plaintiff union is the bargaining representative of the employees who are engaged in production, and maintenance work in the Meter Shop, Service Shop, Third Ward Works, Street Department, West Works and the Meter Reading Department, and that all of such employees are performing essential services to the public as set forth in Section 111.51 of the Wisconsin Statutes.

6. That on August 4th, 1947, the plaintiff union and the employer entered into a contract covering rates of pay, hours of work and the other conditions of employment, but that such contract duly terminated on June 1st, 1948.

7. That prior to June 1st, 1948, the plaintiff union and the employer engaged in negotiations for the purpose of executing a new contract covering the period from June 1st, 1948, to June 1st, 1949.

8. That Section 111.62, Wisconsin Statutes, prohibits all of the employees represented by the plaintiff union from calling or going on strike or quitting work in concert, or from causing any work stoppage, in any essential service.

9. That this prohibition deprives all of the employees represented by the plaintiff union of their only effective means of bargaining collectively, and destroys their constitutional rights to place their own price on their services.

10. That this prohibition was in effect at all times during the above mentioned negotiations, and seriously hampered and injured the plaintiff union in its collective bargaining efforts.

11. That all future attempts by the plaintiff union, as [fol. 38] representative of the employees of the defendant company will be hampered and injured by this prohibition.

12. That negotiations between the plaintiff union and the defendant employer for a new contract, covering wages, hours and other conditions of employment for the period subsequent to June 1st, 1949, will necessarily be entered into in the near future.

13. That Section 111.62, Statutes, provides that any of the employees of the defendant employer violating this section shall be guilty of a criminal offense.

14. That acting in concert is the only possible method by which collective bargaining can be carried on.

15. That the plaintiff union represents the employees of the defendant employer as a group, and as individuals, in any matter relating to collective bargaining for wages, hours, and other working conditions.

16. That the plaintiff, Thomas Lansing, has through many years, built up a property right in his employment, commonly known as "Seniority"; that Section 111.62 and Section 111.63 threaten to destroy this property right by denying him the full protection of the law.

17. That the plaintiffs are informed and believe, and allege the fact to be, that the employer has and will petition the Board, pursuant to Section 111.54 of the Wisconsin Statutes.

18. That the defendant Board claims jurisdiction of the employer and the union, with the right to enjoin and restrain the union and its members from quitting in concert, to call a strike, or go out on strike, or cause any work stoppage.

19. That the position taken by the employer and the Wisconsin Employment Relations Board, that the employees are prohibited from quitting work in concert, completely destroys their right to effectively bargain collectively for [fol.39] their wages, hours and working conditions, by compelling them to remain at work without their consent and against their will.

20. That sub-chapter III of Chapter 111 of the Laws of 1947, and particularly Section 111.62, is unconstitutional, invalid, and in conflict with Section 1, Article 1, Section 2, Article 1, Section 4, Article 1 and Section 22, Article 1 of the Constitution of the State of Wisconsin, and the 13th Amendment to the Constitution of the United States.

21. That the defendant company, upon information and belief, is engaged in the production of goods and the furnishing of services affecting commerce, and that the furnishing of such services affect and control the flow of raw materials, or manufactured or processed goods in inter-state commerce.

22. That the said defendant company, and its employees, are subject to and affected by the National Labor Relations Act as Amended on June 23rd, 1947, by the Congress of the

United States, otherwise known as the Labor Management Relations Act of 1947.

23. That sub-chapter III of Chapter 111 of the Laws of 1947, is in conflict with the United States Labor Management Relations Act of 1947 and therefore does not affect or control the conduct of the plaintiffs and the defendant company with respect to labor management relations.

Wherefore plaintiff prays that the court determine and declare the rights of the parties, and declare sub-chapter III of Chapter 111 of the Laws of 1947, Wisconsin Statutes, unconstitutional and invalid, and give such further relief as may be lawful, just and proper, by way of declaration of the rights of the parties.

Max Raskin, Plaintiffs' Attorney.

[fol. 40] *Duly sworn to by Thomas Lansing. Jurat omitted in printing.*

[fol. 41] EXHIBIT "B" TO ANSWER

STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

No. 216-361

UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, LOCAL 18, Affiliated With the C.I.O., and Thomas Lansing, Plaintiffs,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD and MILWAUKEE GAS LIGHT COMPANY, a Corporation, Defendants

JUDGMENT

The above entitled action having been brought to trial on the issues of law therein raised by the separate demurrers of the defendants to the amended complaint therein; and having been heard on the 22nd and 26th days of November, 1948, at the Court House in the City and County of Milwaukee, Wisconsin, the Honorable Daniel

W. Sullivan, Circuit Judge, presiding; Beatrice Lampert, Assistant Attorney General, having appeared for the defendant Wisconsin Employment Relations Board in support of its demurrer to said amended complaint; Miller, Mack & Fairchild, represented by J. G. Hardgrove and Charles H. Oldfather, Jr., having appeared as attorneys for the defendant Milwaukee Gas Light Company in support of its demurrer to said amended complaint; and Max Raskin and William F. Quick having appeared as attorneys for the plaintiffs in opposition to said demurrers; and the court having heard the arguments of counsel and being advised in the premises; and having entered an order sustaining each of said demurrers to said amended complaint, and directed the entry of judgment declaring the rights [fol. 42] of the parties and dismissing the above entitled action on the merits; and the court having found that Chapter 414, Laws of 1947, being subchapter III of Chapter 111 of the Wisconsin Statutes, 1947, is a valid act and not in violation of nor in conflict with the Constitution of the State of Wisconsin, nor of the Constitution of the United States, nor of any amendment thereto, and not in conflict with the United States Labor-Management Relations Act of 1947; Now, Therefore,

It Is Hereby Adjudged and Determined that Chapter 414, Laws of 1947, being Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947, is a valid and constitutional act, and does not violate nor conflict with any of the provisions of the Constitution of the State of Wisconsin, nor with any of the provisions of the Constitution of the United States, nor with any amendment thereto, and does not conflict with the United States Labor-Management Relations Act of 1947, and does not deny to the plaintiffs nor to any of the employees of the defendant Milwaukee Gas Light Company represented by them, and does not deprive them of, any rights, privileges or protection secured to them under either of said constitutions or said act of Congress; and that the plaintiffs, the defendant Milwaukee Gas Light Company, and its employees represented by the plaintiffs herein, are subject to and controlled by said Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947.

It Is Further Adjudged that the prayer of the plaintiffs [fol. 43] in the above entitled action for further relief be and the same hereby is denied.

Dated Milwaukee, Wisconsin, January 6th, 1949.

By the Court. Fred J. Jaeger, Clerk, By Harold H. Gruettner, Deputy Clerk.

Let the foregoing judgment be entered.

Daniel W. Sullivan, Circuit Judge.

[fol. 44] In the District Court of the United States for the Eastern District of Wisconsin

Answer on Behalf of State Official Defendants—Filed November 8, 1949

1. This answer is made on behalf of defendants Wisconsin Employment Relations Board, L. E. Gooding, J. E. Fitzgibbon and Henry C. Rule, individually and as Commissioners constituting the Wisconsin Employment Relations Board, and Thomas E. Fairchild, individually and as Attorney General of the State of Wisconsin, hereinafter referred to as "state official defendants".

2. State official defendants admit the averments contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 33, 34, 36, subparagraph (a) of paragraph 2 and the first subparagraph of paragraph 28 of the amended complaint.

[fol. 45] 3. The state official defendants deem the averments hereinafter referred to to be conclusions of law but insofar as they may be held to be averments of fact deny the same: paragraphs 1, 35, 37, 38, 39, 40, 41, 42, 43 and 44, subparagraphs (b) and (c) of paragraph 2 and the second subparagraph of paragraph 28 of the amended complaint.

4. The state official defendants admit the averment of paragraph 16 of the amended complaint, that defendant Milwaukee Gas Light Company is a public utility employer and is primarily engaged in furnishing illuminating and heating gas to the general public in the city and county of Milwaukee, Wisconsin. They deny the averment that

the company is engaged in commerce as defined in 29 U.S.C.A. 152(6) and deny that the term "trade affecting commerce" is defined in 29 U.S.C.A. 152 (7) and deny the averment that the company is engaged in trade affecting commerce as so defined. They allege that the National Labor Relations Board has made no determination that a dispute between the company and its employees, the same being subjected to the provisions of subchapter III of chapter 111, Wis. Stats., affects commerce.

5. The state official defendants allege that should acts of plaintiffs or others in the future constitute violations of subchapter III of chapter 111, Wis. Stats., the defendant attorney general would then act in accordance with the provisions of statute covering duties of his office, and in all other respects deny the averment contained in paragraph 30 of the amended complaint.

6. State official defendants admit the averment of paragraph 31 of the amended complaint as to the agreement on October 6, 1949 between plaintiff union and the de-[fol. 46] fendant company but they have no knowledge or information sufficient to form a belief as to any threat by the defendant company to invoke the provisions of subchapter III, chapter 111, Wis. Stats., to compel the plaintiffs to agree to a pension plan.

7. State official defendants allege that in the event the unresolved issue of pensions appears to approach an impasse or stalemate, they will take such action as may be required to enforce the provisions of subchapter III, chapter 111, Wis. Stats., but in all other respects deny the averments of paragraph 32 of the amended complaint.

8. (a) On or about September 3, 1948, the union commenced an action against Wisconsin Employment Relations Board and Milwaukee Gas Light Company in the circuit court of the state of Wisconsin for Milwaukee county, Wisconsin, a court of competent jurisdiction, and later plaintiff Lansing joined as an additional plaintiff in that action, hereinafter called "declaratory judgment action". The amended complaint in the declaratory judgment action alleged among other things that the plaintiff union brought the action as the representative of the employes of the defendant Milwaukee Gas Light Company, being specifically authorized so to do; that the defendant company is

a public utility corporation engaged in the business of furnishing essential service such as light, heat and gas to the public in the state of Wisconsin; that the plaintiff union is the bargaining representative of certain employes of the company performing essential services to the public; that the Wisconsin Employment Relations Board claims jurisdiction of the company and the union with the right to enjoin and restrain the union and its members from quitting in concert to call a strike or go out on strike or cause any [fol. 47] work stoppage; that subchapter III of chapter 111 of the Laws of 1947 is unconstitutional and in conflict with the Thirteenth Amendment to the Constitution of the United States; that the company is engaged in the production of goods and the furnishing of services affecting commerce and that the furnishing of such services affect and control the flow or raw materials, of manufactured or processed goods in interstate commerce; that subchapter III of chapter 111 is in conflict with United States Labor Management Relations Act of 1947 and therefore does not affect or control the conduct of the plaintiff and the company with respect to labor management relations. The complaint prayed for a declaration of the rights of the parties and a declaration that said subchapter is unconstitutional. After trial of the declaratory judgment action on the issues of law raised by the demurrers of defendants to the amended complaint therein, the circuit court entered judgment as follows:

> "*It is Hereby Adjudged and Determined* that Chapter 414, Laws of 1947, being Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947, is a valid and constitutional act, and does not violate nor conflict with any of the provisions of the Constitution of the State of Wisconsin, nor with any of the provisions of the Constitution of the United States, nor with any amendment thereto, and does not conflict with the United States Labor-Management Relations Act of 1947, and does not deny to the plaintiffs nor to any of the employees of the defendant Milwaukee Gas Light Company represented by them, and does not deprive them of any rights, privileges or protection secured to them under either of said constitutions or said act of Congress; and that the plaintiffs, the defendant Milwaukee Gas Light Company, and its em-

ployees represented by the plaintiffs herein, are subject to and controlled by said Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947.

"*It Is Further Adjudged* that the prayer of the plaintiffs in the above entitled action for further relief be and the same hereby is denied."

[fol. 48] (b) The said judgment of the circuit court for Milwaukee county was affirmed by the supreme court of Wisconsin on appeal on July 12, 1949. No review of the said judgment by the supreme court of the United States has been sought by appeal or writ of certiorari. A true copy of said amended complaint and of said judgment are hereunto annexed, marked Exhibits A and B and made a part hereof.

(c) The issues raised by the pleadings in this action were raised by the amended complaint and demurrer in the declaratory judgment action and fully argued upon the trial and the said final and unreversed judgment therein is a full and final adjudication between the parties hereto of all the issues sought to be raised by plaintiffs in this action and is a bar and complete defense herein.

Wherefore the state official defendants pray that the amended complaint be dismissed.

Thomas E. Fairchild, Attorney General, In his own proper person and as attorney for defendants Wisconsin Employment Relations Board, L. E. Gooding, J. E. Fitzgibbon and Henry C. Rule. Stewart G. Honeck, Deputy Attorney General. Beatrice Lampert, Assistant Attorney General, Attorneys for defendants Wisconsin Employment Relations Board, L. E. Gooding, J. E. Fitzgibbon and Henry C. Rule, and Thomas E. Fairchild.

P. O. Address: State Capitol, Madison 2, Wisconsin.

[fols. 49-51] Exhibit "A" Omitted. Printed side page 41 ante.

[fols. 52-56] Exhibit "B" Omitted. Printed side page 36 ante.

[fol. 57] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

SECOND STIPULATION AS TO FACTS—Filed December 16, 1949

The parties to the above entitled action by their respective counsel stipulate as follows:

I. This second stipulation is made at the request of the Court and by agreement of the parties and is to take the place of the stipulation originally filed in this action dated November 23, 1949.

II. This stipulation is made for the purpose of submitting the case to the court in lieu of trial of issues of fact and [fol. 58] limiting the trial herein to issues of law. The court's findings and conclusions shall have the same force and effect as though all issues of fact had been fully tried on proper notice.

III. Each party reserves the right to object to the relevancy and materiality of any fact stated in this stipulation.

IV. Each party waives any right to introduce evidence before the court in this action except as the court may at its discretion permit, and except that the defendant company reserves the right to offer in evidence an exemplified copy of the opinion of the trial court in the State Court action referred to in paragraph 7 hereof.

V. The following statements are true and findings may be based thereon subject to the right of each party to object on the grounds of relevancy and materiality as hereinabove reserved:

1. That the matter is controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3000.00) pursuant to Section 1331 of Title 28 of the U. S. C. A.

2. That the plaintiff, Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and hereinafter referred to as the union, is an unincorporated association of employees employed in the production, maintenance, operation, construction and meter reading, of approximately seven hun-

dred seventy (770) in number, all of whom are employed with the defendant, Milwaukee Gas Light Company, and that the office of the said union is in the city of Milwaukee, Milwaukee County, Wisconsin; that it is a labor organization as defined in Section 2 (5) of the Labor Management Relations Act of 1947.

3. That the plaintiff, Chester Walczak, is a citizen of the United States and a resident of the city and county of Milwaukee, Wisconsin, residing at 3350 North Richards Street, and is the International Representative of said union.

[fol. 59] 4. That the plaintiff, Arthur St. John, is a citizen of the United States, and a resident of Waukesha County, Wisconsin, residing at Route 12, Box 529, and is the President of the said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Five Hundred Dollars ($3500.00).

5. That the plaintiff, Al Fuhrman, is a citizen of the United States, and a resident of Milwaukee County, Wisconsin, residing at 6308 Beloit Road, West Allis 14, and is the vice president of the said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Three Hundred Dollars ($3300.00).

6. That the plaintiff, Emil Heimsch, is a citizen of the United States, and a resident of Milwaukee, Wisconsin, residing at 1054 North 46th Street, and is the Chairman of the Bargaining Committee of the union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Seven Hundred Dollars ($3700.00).

7. That the plaintiff, Thomas Lansing, is a citizen of the United States, and a resident of Milwaukee, Wisconsin, residing at 2779 South Superior Street, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Five Hundred Dollars ($3500.00).

8. That the plaintiff, John F. Sheehan, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, reading at 2518 South 11th Street, Milwaukee, and is a

member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately [fol. 60] Three Thousand Two Hundred Dollars ($3200.00).

9. That the plaintiff, E. F. Regner, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2371 South 79th Street, West Allis 14, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand Three Hundred Dollars ($3300.00).

10. That the plaintiff, Edward P. Regan, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2933 North Cramer Street, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand One Hundred Dollars ($$100.00).

11. That the plaintiff, La Moine S. Cardinal, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 1435 West Kilbourn Avenue, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Thirty Two Hundred Dollars ($3200.00).

12. That the plaintiff, Gordon Donnelly, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, residing at 2134A North 2nd Street, and is the recording secretary of said union. That he is an employee of the Milwaukee Gas Light Company and has earned annually from said company approximately Three Thousand One Hundred Dollars ($3100.00).

13. That the defendant, L. E. Gooding, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city [fol. 61] of Fond du Lac, Winnebago County, Wisconsin. The defendant, J. E. Fitzgibbon, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the City

of Milwaukee, Milwaukee County, Wisconsin. The defendant, Henry C. Rule, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Eau Claire, Eau Claire County, Wisconsin. That all of said defendants constitute the Wisconsin Employment Relations Board, which has offices at 110 East Wisconsin Avenue, Milwaukee, Wisconsin. That said Wisconsin Employment Relations Board is established pursuant to and under the statutes of the state of Wisconsin, Section 111.03, Wis. Stats. of 1947, and is composed of the aforesaid commissioners; that said Board has for its duty the enforcement and compliance with subchapter 3 of chapter 111 of the Laws of the State of Wisconsin titled "Public Utilities" as set forth in sections 111.50 through 111.64 Wisconsin Statutes of 1947.

14. That the defendant, Thomas E. Fairchild, is the duly elected qualified and acting Attorney General of the State of Wisconsin, and as such is charged with the enforcement of the laws of the State of Wisconsin, is a citizen of the United States and is a resident of the village of Verona, Dane County, Wisconsin.

15. That the annual earnings of all of such members of the union as employees of the defendant company is approximately Two Million Three Hundred Ten Thousand Dollars ($2,310,000.00).

16. That the members of the union, including the plaintiffs, have assembled and associated themselves in the said union for the purpose of collective bargaining and otherwise dealing with the defendant company concerning hours [fol. 62] of employment, rates of pay, pensions, working conditions, grievances arising out of employment, and for other mutual aid and protection, and by such means to improve their economic and social conditions as citizens of the United States.

17. The Labor Management Relations Act of 1947, adopted by the Congress, is a law regulating commerce as set forth in Section 101 and Section 204 of the Act as amended. That since 1937, to August 1st, 1943, the defendant company recognized the plaintiff union as the exclusive bargaining representative for all of its employees performing production and maintenance work, for the purpose of

bargaining with respect to rates of pay, hours of employment, and other conditions of employment, and that on August 1st, 1943, the plaintiff union was duly certified by the National Labor Relations Board, acting under the National Labor Relations Act of 1935, as the exclusive bargaining representative for all of the employees of the defendant company in said unit, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment.

18. That commencing with June, 1937, and annually thereafter including June, 1948, the plaintiff union and the defendant company entered into collective bargaining agreements for wages, hours of employment, and other working conditions of all of the employees represented by the said union.

19. That the most recent of such contracts was entered into between the plaintiff union and the defendant Company on September 24th, 1948, which by its terms remained in full force and effect until June 1st, 1949, and from year to year thereafter unless terminated by written notice on or before April 1st, of any year; that the plaintiff union terminated said agreement as of June 1st, 1949, by written notice [fol. 63] to the defendant company prior to April 1st, 1949, as required by Section 8 (d) of the Labor Management Relations Act of 1947.

20. That the Federal Mediation and Conciliation Service, acting under the Notice of Termination of Contract, copy of which was submitted to it, intervened and proceeded to assist in the negotiation of a contract for the year 1949-50.

21. That the probable earnings of all of such employees represented by the plaintiff union for a contemplated contract for the year 1949-50 is Two Million Three Hundred Ten Thousand Dollars ($2,310,000.00).

22. That on September 19th, 1949, the plaintiff union filed a petition with the National Labor Relations Board, charging the defendant company with having violated Section 8 (a) (5) of the Labor Management Relations Act of 1947, in that it was guilty of an unfair labor practice for having failed and refused to bargain collectively with the plaintiff union, the duly authorized bargaining representative of the majority of the employees in the bargaining unit, and that

such petition is now pending before the National Labor Relations Board.

23. That subsequent to the filing of the aforesaid petition with the National Labor Relations Board, defendant company did enter into collective bargaining with the plaintiff union covering wages, pensions, hours and other conditions of employment.

24. That the defendant Attorney General, together with the defendant Wisconsin Employment Relations Board, has since caused the issuance of process to punish the plaintiffs and other employees of the defendant company for whom this action is brought, for allegedly violating the injunction of the circuit court and subchapter 3, chapter 111 of the Wisconsin Statutes, of 1947; that unless the relief prayed for herein is granted by this court the plaintiffs and [fol. 64] others for whom they are authorized to act, will be subjected to fines or imprisonment, or both.

25. That on the 28th day of September, 1949, the defendant company filed with the Wisconsin Employment Relations Board, a petition, a copy of which is attached to the amended complaint and marked Exhibit "A".

26. That on October 3rd, 1949, the defendant, Wisconsin Employment Relations Board, issued an order, a copy of which is attached to the amended complaint and marked Exhibit "B", directing the plaintiffs to choose arbitrators as provided in subchapter 3, Chapter 111 of Wisconsin Statutes of 1947, and that such order issued under the purported authority of the Wisconsin Statutes has not been revoked, and remains as threatened by the Wisconsin Employment Relations Board, binding upon the plaintiffs.

27. That the Wisconsin Employment Relations Board and the defendant company claim to act under authority of subchapter 3 of Chapter 111 of the Laws of the State of Wisconsin, 1947.

28. (a) That the defendant company is a Wisconsin corporation, and is a public utility employer with offices located at 626 East Wisconsin Avenue, Milwaukee, Wisconsin; and is primarily engaged in the furnishing of illuminating and heating gas to the general public in the cities of Milwaukee, West Bend, West Allis, Wauwatosa, Port Washington and

Hartford, and the villages of Shorewood, West Milwaukee, Whitefish Bay, River Hills, Fox Point, Menomonee Falls, Grafton, Slinger, Thiensville, Germantown, Saukville and Jackson, and the townships between the City of Milwaukee and the said outlying cities and villages in the State of Wisconsin. The total franchise area served exceeds five hundred square miles. The total population of the area is nearly eight hundred thousand. The number of customers exceeds two hundred thousand.

(b) That during the year of 1948 Milwaukee Gas Light Company purchased materials and supplies from vendors [fol. 65] located outside the State of Wisconsin as follows:

Gas oil	$570,059.58
Coke breeze	116,827.32
Natural gasoline	267,842.73
Butane and Propane	1,379,050.22
Pipe and fittings	240,247.25
Appliances and parts	394,495.03
	$2,968,522.13

The Milwaukee Gas Light Company's total purchases during this period, exclusive of coke oven gas, were $6,296,-397.47. Coke over gas during this period, purchased from Milwaukee Solvay Coke Company, (a wholly owned subsidiary), was $2,053,614.90. Accordingly, total purchases of all materials and supplies from vendors both within and outside Wisconsin were $8,350,012.37. During the year of 1948 Milwaukee Gas Light Company sales to industrial customers (most of the large industrial customers being engaged in interstate commerce), amounted to $1,462,636.07. All other sales during that period amounted to $9,384,376.26, or a total sales of $10,847,012.33. Accordingly a substantial portion of the purchases of materials and supplies of Milwaukee Gas Light Company were made from vendors outside the state. Milwaukee Gas Light Company is now converting to natural gas, the source of which is outside the state.

That the company is engaged to the approximate extent above indicated in the production of goods, and the furnishing of services affecting interstate commerce, and the furnishing of such services affect and control, to some degree,

the flow of raw materials, or manufactured or processed goods in interstate commerce.

(c) That on June 24, 1943, an order was entered by the National Labor Relations Board directing an election for the purpose of determining the representative of the employees of the company for collective bargaining (National Labor Relations Board Case No. R-5398). This order was [fol. 66] amended by order of the National Labor Relations Board, dated July 8, 1943, for the purpose of further defining the unit. A supplemental decision and certification of the National Labor Relations Board in this case was entered on October 5, 1943, certifying United Gas, Coke and Chemical Workers of America (CIO) as the representative of the employees of the company in the unit.

An order dated October 30, 1946, was entered by the National Labor Relations Board directing an election with respect to employees of the company in a unit comprised of supervisory employees (National Labor Relations Board Case No. 13-R-3037). At the election conducted pursuant to this order less than a majority of the employees of the unit*ed* voted to be represented by a union.

In both of these cases the National Labor Relations Board found that Milwaukee Gas Light Company was engaged in commerce within the meaning of the National Labor Relations Act.

The National Labor Relations Board has made no determination in any proceedings with respect to any alleged unfair labor practice on the part of the company or its employees.

A petition charging the company with an unfair labor practice has been filed by the plaintiff union with the National Labor Relations Board as alleged in paragraph 25 of the amended complaint. The company has filed with the National Labor Relations Board a written denial of the charge and requested dismissal thereof and no action has been taken by the National Labor Relations Board upon the said petition. Except as otherwise stated in this subparagraph (c), National Labor Relations Board has made no determination in any proceeding that any alleged unfair labor practice on the part of the company or its employes [fol. 67] does or would actually threaten or affect interstate or foreign commerce.

29. That the plaintiffs bring this action on behalf of themselves and all others similarly situated, that is to say, the members of the union who are also employees of the defendant company and are authorized so to do.

30. That on October 5, 1949 the plaintiffs left the employment of the defendant company individually, in concert, and in agreement with others, and commenced the picketing of the company's premises. In recognition of the picket line so maintained, the company's employees refrained from crossing the same and no acts of violence occurred in connection with the maintenance of such picket lines. Prior to such time, negotiations as to the terms of employment had been carried on by plaintiffs and the company, and up to the time immediately prior to such concerted action, the defendant company had not agreed to certain terms offered by plaintiffs, and plaintiffs had not agreed to certain terms offered by defendant company. Such failure to reach an agreement resulted in an impasse which was the reason for said concerted action by plaintiffs and others.

31. That on October 5, 1949 in an action in the name of Wisconsin Employment Relations Board, as plaintiff, against Milwaukee Gas Light Company, Glen R. Chamberlain, President, B. T. Frank, Vice President, P. J. Imse, Secretary-Treasurer, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, Affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing, circuit court for Milwaukee county, Wisconsin, issued an order which provided in part as follows:

> "It Is Further Ordered that until the hearing of said order to show cause:
>
> "(a) the defendants, Milwaukee Gas Light Company, Glen R. Chamberlain, B. T. Frank, P. J. Imse, [fol. 68] and each of them, and their employees, servants and agents, do desist and refrain from failing and neglecting to exert every reasonable effort to settle the labor dispute between said company and the representative of its employees and to prevent the collective bargaining process from reaching a state of impasse and stalemate;
>
> "(b) the defendants, the United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester

Walczak and Thomas Lansing to absolutely desist and refrain from calling a strike, going out on strike, or cause any work stoppage or slowdown which would cause an interruption of the service of the Milwaukee Gas Light Company or the Milwaukee Solvay Coke Company and from instigating, inducing, conspiring with or encouraging any strike, slowdown or work stoppage which would cause interruption of such service, and from picketing or causing to be picketed the premises of the Milwaukee Solvay Coke Company.

"It Is Further Ordered that until the hearing of said order to show cause the defendants, The United Gas, Coke and Chemical Workers of America, District 7, Local Union 18, affiliated with the C. I. O., Arthur St. John, Chester Walczak and Thomas Lansing, take immediate steps to notify all employees called out on strike to resume service forthwith."

The said order was sought by the state official defendants under the authority of sec. 111.63, Wisconsin Statutes.

32. That each party stipulates for himself that he has no present knowledge that subchapter 3 of ch. 111, Wisconsin Statutes is being violated by the plaintiffs, or the defendant company, at the date of this stipulation. Should such violation occur in the future, the attorney general would perform such duties as are imposed upon him by the Wisconsin Statutes if so required by the Wisconsin Employment Relations Board.

33. That on October 6, 1949, plaintiff union and the defendant company agreed upon wages, hours and other con- [fol. 69] ditions of employment but have not agreed on the exact terms and conditions of the pension plan for the employees of the defendant company for whom the plaintiff union is authorized to bargain. Disagreement on said pension plan was one of the principal issues in dispute on October 5 when the strike took place. If an impasse or stalemate should arise in negotiations between the company and the union with reference to a pension plan, the company will request the Wisconsin Employment Relations Board to perform its duties under subchapter 3, chapter 111, Wisconsin Statutes.

34. If an impasse or stalemate is reached in said negotiations, the Wisconsin Employment Relations Board will take

steps pursuant to subchapter 3, chapter 111, Wisconsin Statutes, to effect a settlement through conciliation or a determination through arbitration, as the case may be, and would take such steps as are authorized and as it would deem necessary to prevent or stop a violation of said subchapter by the defendant company or its employees, including plaintiffs.

35. That on or about September 3, 1948, the plaintiff Local 18, United Gas, Coke & Chemical Workers of America commenced an action in the circuit court for Milwaukee county, Wisconsin as plaintiff against the Wisconsin Employment Relations Board and the Milwaukee Gas Light Company, two of the defendants in the above entitled action, praying the court to determine and declare the rights of the parties, and to declare subchapter 3 of chapter 111 of the Wisconsin Statutes of 1947 unconstitutional and invalid, and to give such further relief by way of declaration of the rights of the parties as might be lawful, just and proper.

36. That on or about October 13, 1948, the summons in said action so commenced in the circuit court for Milwaukee county was amended by adding thereto as one of the plaintiffs Thomas Lansing, who is one of the plaintiffs in this action.

[fol. 70] 37. That at the same time an amended complaint was served therein. As appears by said amended complaint, said plaintiff union brought said action as the representative of the employees of the defendant Milwaukee Gas Light Company, being specifically authorized so to do; and that it was therein alleged that said Thomas Lansing had, through many years, built up a property right in his employment commonly known as "seniority" and it was therein charged that sections 111.62 and 111.63 of said chapter 111 of the Wisconsin Statutes of 1947 threatened to destroy said property.

38. That on November 1, 1948, the defendant Milwaukee Gas Light Company interposed in said action a demurrer which, omitting venue, title and signature, reads as follows:

> "Now comes the Milwaukee Gas Light Company, one of the defendants in the above entitled action, by Miller, Mack & Fairchild, its attorney, and demurs to the amended complaint therein on the ground that it ap-

pears on the face of said amended complaint that the same does not state facts sufficient to constitute a cause of action."

39. That on or about October 29, 1948, the defendant Wisconsin Employment Relations Board interposed in said action a demurrer which, omitting venue, title and signature, reads as follows:

> "Now comes the Wisconsin Employment Relations Board one of the respondents above named by its attorneys Grover L. Broadfoot, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General and demurs to the amended complaint in the above entitled action on the grounds that it appears on the face of said amended complaint that the same does not state facts sufficient to constitute a cause of action."

40. That said action was brought to trial on the issues of law raised by the separate demurrers of the defendants therein to said amended complaint, and was heard on the 22nd and 26th days of November, 1948, all of the parties [fol. 71] to said action having been represented in court by their respective counsel.

41. That on January 6, 1949, the said circuit court for Milwaukee county, Wisconsin, being of the opinion that subchapter 3 of Chapter 111 of the Wisconsin Statutes of 1947 was a valid act, and not in violation of nor in conflict with any provision of the Constitution of the state of Wisconsin, nor the Constitution of the United States, nor of any amendment thereto, and not in conflict with the United States Labor-Management Relations Act of 1947; and being further of the opinion and having determined that any further amendment of said amended complaint would be unavailing, ordered that said demurrers to the amended complaint in said action be sustained, and that judgment be entered declaring the rights of the parties, and denying the prayer of the plaintiffs, for further relief.

42. That on January 6, 1949, said circuit court for Milwaukee county, Wisconsin entered a judgment determining that said subchapter 3 of chapter 111 of the Wisconsin Statutes of 1947 was a valid and constitutional act; that it did not violate nor conflict with any of the provisions of

the Constitution of the State of Wisconsin, nor with any of the provisions of the Constitution of the United States, nor with any amendments thereto; and did not conflict with the United States Labor Management Relations Act of 1947; and did not deny to the plaintiffs nor to any of the employees of the defendant Milwaukee Gas Light Company represented by them, and did not deprive them of any rights, privileges or protection secured to them under either of said constitutions or of said act of Congress; and that the plaintiffs in said action, the defendant Milwaukee Gas Light Company, and its employees represented by the plaintiffs therein, were subject to and controlled by said [fol. 72] subchapter 3 of chapter 111 of the Wisconsin Statutes of 1947; and further adjudged that the prayer of the plaintiffs in said action for further relief be and the same was thereby denied.

43. That an appeal was taken from the judgment so entered on January 6, 1949 by the plaintiffs in said action to the supreme court of the state of Wisconsin; that thereafter such proceedings were had in said supreme court of the state of Wisconsin that said judgment of said circuit court for Milwaukee county was affirmed, such judgment of affirmance having been entered on July 12, 1949; and that the remittitur from said supreme court was returned to and filed in the office of the clerk of the circuit court for Milwaukee county, Wisconsin, with no accompanying opinion, declaring that, on consideration of the appeal, it was ordered and adjudged by said supreme court that the judgment of said circuit court of Milwaukee county be and the same was affirmed.

44. That the opinion of the Supreme Court of Wisconsin with respect to the said appeal was filed in the office of the clerk of that court on July 12, 1949, and is reported under the title: *United Gas, Coke & Chemical Workers of America, Local 18, C.I.O., and another vs. Wisconsin Employment Relations Board and another*, 255 Wis. (Advance Sheets) 154-163, 38 N. W. (2d) (Advance Sheets) 692-697.

45. That no application by appeal, writ of error, certiorari or otherwise to have said judgment reviewed by the supreme court of the United States of America has been made.

46. That it is claimed by defendants that the said judgment constitutes *res judicata* as to all the issues presented in this action and as to all relief now sought in this action but the plaintiffs claim it does not constitute *res judicata*.

[fol. 73] 47. That this court may take judicial notice of the briefs filed in said action in the circuit court of Milwaukee county, in the supreme court of Wisconsin, and of the opinion of the supreme court of Wisconsin. The copies of the amended complaint, and judgment in said action attached to the defendants are true copies.

Dated: —— —, ——

(S.) Max Raskin, Attorney for Plaintiffs. Thomas E. Fairchild, Stewart G. Honeck per tef. Beatrice Lampert per tef, Attorneys for State Official Defendants. J. G. Hardgrove, Vernon A. Swanson, Attorneys for Defendant Company.

[fol. 74] Filed Dec. 30, 1948. Fred J. Jaeger, Clerk.

DEFENDANT'S EXHIBIT "A"

STATE OF WISCONSIN, CIRCUIT COURT, MILWAUKEE COUNTY

No. 216-361

UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, LOCAL 18, Affiliated With the C.I.O., and Thomas Lansing, Plaintiffs,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD and MILWAUKEE GAS LIGHT COMPANY, a Corporation, Defendants

Filed Mar. 4, 1949. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

No. 217-441

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY and Motor Coach Employes of America, Division 998, George Koechel, and Charles Brehm, Individually and in Their Representative Capacity, Plaintiffs,

vs.

THE MILWAUKEE ELECTRIC RAILWAY & TRANSPORT COMPANY, a Wisconsin Corporation, and the Wisconsin Employment Relations Board, Defendants

DECISION

The above entitled actions are brought pursuant to Section 269.56 Stats. for a declaration of the rights, status and legal relations of the parties under Chapter 414, Laws of 1947 (Sub. chap. III of Chap 111, Stats.), relating to compulsory arbitration of labor disputes in public utility industries, and for a declaration that said Act is unconstitutional.

[fol. 75] In the action last above entitled, it is alleged that the union is the collective bargaining representative of the employes of the defendant, Transport Company, and that for many years collective bargaining contracts have existed between the parties and that the current contract will expire on December 31, 1948; that, pursuant to

the terms of said contract, each of the parties has given notice of changes which it desires in the renewal contract. Further, it is alleged: "That by virtue of the restrictive, arbitrary, discriminatory and unconstitutional provisions of the Wisconsin Act as aforesaid, including the right of the State under the provisions of the law to impose upon the parties an agreement establishing wages, hours and working conditions, contrary to their desires and requests, plaintiffs and those employes represented by plaintiffs are precluded from engaging in good faith collective bargaining because of the pervading threat of the criminal penalties provided by the law, and the right to injunctive relief provided by the law, and are unable to fully assert their collective strength and to engage in good faith collective bargaining."

The complaint in the action first above entitled alleges that it is the collective bargaining representative of the employees of the defendant Gas Company; that a renewal contract between plaintiff and defendant, Gas Company, was entered into on June 1, 1948, for a period of one year, but that plaintiff union was seriously hampered at that time in its collective bargaining efforts by reason of Sec. 111.62 Stats. (created by Chap. 414, Laws of 1947) which prohibits employes, under penalty of being guilty of a [fol. 76] criminal offense, from calling or going on strike or quitting work in concert, or from causing any work stoppage in any essential service, which thereby prevents employees from exercising their only effective means of bargaining collectively. Further, that plaintiffs are about to begin negotiations with defendant, Gas Company, for a renewal contract and that, if the relief here sought is not granted, they will be similarly handicapped.

In each action it is alleged that the defendant company and its employees are subject to the National Labor Relations Act, as amended on June 23, 1947 (known as the Taft-Hartley Act) and that Chapter 414, Laws of 1947, is violative thereof.

The issues are before the court by a demurrer interposed by defendants in the first above entitled action, and by plaintiffs' demurrer to the answer in the action last above entitled.

The facts alleged satisfactorily show (1) a justiciable controversy, (2) adverse interests of the parties plaintiff

and defendant, (3) a legally protectible interest on the part of each of the plaintiffs, and (4) that the issues are ripe for judicial determination. *State ex rel. LaFollette v. Dammann*, 220 Wis. 17.

Chapter 414, Laws of 1947, creating Secs. 111.50 to 111.65 Stats., was enacted in furtherance of the declared public policy of this state to the effect that "it is necessary and essential in the public interest to facilitate the prompt peaceful and just settlement of labor disputes between [fol. 77] public utility employers and their employes which cause or threaten to cause an interruption in the supply of an essential public utility service to the citizens of this state and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions of employment through collective bargaining between public utility employers and their employes, * * *". Section 111.54 provides that, if the collective bargaining process reaches an impasse and stalemate, that a conciliator may be appointed by the Labor Board to assist the parties in the settlement of the dispute. The act, however, "forbids strikes or other activities of both the utility and its employees which would lead to an interruption of essential service to the public and provides for compulsory arbitration of disputes where an impasse in collective bargaining processes has been reached and an interruption of essential service is likely". If the conciliator is unable to effect a settlement, the law provides for the appointment of an arbitrator (or arbitrators), who shall conduct a hearing upon notice to the parties and whose decision, subject to review by the court, shall be binding upon the parties. Sec. 111.56 provides that the status quo shall be maintained pending the determination of the arbitrator. Under Sec. 111.63, the Labor Board is charged with the duty of enforcing compliance with the law and may commence an action in the Circuit Court to restrain violations and to enforce duties imposed thereunder. Sec. 111.62 provides:

> "111.62 Strikes, Work Stoppages, Slowdowns, Lockouts, Unlawful; Penalty. It shall be unlawful for any group of employes of a public utility employer acting [fol. 78] in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential

service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor."

Plaintiffs contend:

1. That Chap. 414, Laws of 1947, violates the "due process of law" and the "equal protection of the laws" provisions of the XIV Amendment to the Constitution of the United States.

2. That it likewise violates the 13th Amendment in that it imposes "involuntary servitude" upon the plaintiffs.

3. That it impairs the obligations of contract, contrary to Sec. 10, of Article I.

4. That it constitutes an unlawful delegation of legislation, executive and judicial powers, contrary to the constitution of Wisconsin.

5. That it violates Article VII, Section 16, Wisconsin Constitution "in that it establishes a tribunal of conciliation with the power to render binding judgment on the parties without the agreement of both parties."

6. That it is violative of Article XIII, Sec. 9, Wisconsin Constitution, "relating to the way and method of appointment of officers of the state".

[fol. 79] 7. That the law is in conflict with the National Labor Relations Act, as presently amended (known as the Taft-Hartley Act).

8. In case No. 217-441, the further contention is made that the Transport Company is exempted from the operation of the law by the provisions of Sec. 111.51 (1) to the effect that

Subchapter III shall not apply to "railroads nor railroad employes".

It is settled law that "workers are privileged intentionally to cause harm to another by *concerted* action if the *object* and *means* of their concerted action are proper". Restatement: Torts. Sec. 775. The test is whether the *concerted* action is justified. Within the limits stated, workers (1) may organize for lawful purposes, including that of collective bargaining; (2) they may engage in peaceful picketing; (3) they may strike to accomplish lawful ends; and (4) they may contract with an employer as to wages and terms and conditions of employment. All of the rights above enumerated and all of the constitutional guaranties, invoked by counsel for plaintiffs, are subject, however, to regulation under the police power of the state, in the interests of the public welfare. The field of permissible regulation covers all acts and conduct, by employers and employees, which are "affected by a public interest". It cannot be said, therefore, that the right to strike, picket, engage in collective bargaining or to contract with reference to wages and conditions of employment are *absolute* or beyond the power of the state to regulate as the public interests may require. [fol. 80] *Dorcy v. Kansas* 272 U. S. 306, 311, 71 L. ed. 278; *Wolff Co. v. Industrial Court* 262 U. S. 522, 67 L. ed. 1103; *Munn v. Illinois*, 94 U. S. 113, 126, 123, 24 L. ed. 77; *W. L. R. B. v. Fansteel Corp.*, 306 U. S. 240, 256, 83 L. ed. 627; *International Union* v. *Wisconsin E. R. Board*, 250 Wis. 550; 11 Am. Jur. Secs. 267 and 308 (pp. 1092-3). The extent of allowable regulation is measured by the extent of the public interest.

"Police power" is a power inherent in every sovereignty to govern men and things under which the Legislature may, within constitutional limitations, not only prohibit all things hurtful to the comfort, safety, and welfare of society, but prescribe regulations to promote the public health, morals and safety and add to the general public convenience, prosperity and welfare. *State v. Redmon*, 114 N. W. 137, 134 Wis. 89. "The validity of a legislative police regulation depends upon whether the *ends* sought to be attained are appropriate, and the *means* to such ends are also appropriate." *State v. Phelps*, 144 Wis. 1; *State v. Frear*, 144 Wis. 58; *Mehlos v. Milwaukee*, 156 Wis. 591; *Wis. Telephone Co. v. Milwaukee*, 223 Wis. 251; *State v. McKune*, 215 Wis. 592.

What is reasonable regulation in any given case, "being a matter resting in human judgment and difficult of ascertainment, in all doubtful cases judicial authority must defer to legislative wisdom, but, where the interference is plainly excessive, the duty of the court to repeal the encroachment is absolute. *Bonnett v. Vallier*, 116 N. W. 885, 136 Wis. 193." It is well settled that the police power may be exerted [fol. 81] by state legislation, even though the effect may be to invade rights guaranteed by the 14th Amendment, when such legislation bears a real and substantial relation to the public health, safety and welfare. *Louis K. Liggett Co. vs. Buldridge*, 278 U. S. 105, 111-112, 73 L. ed. 204. State legislation will be invalidated only when it is "plain and palpable" that it was no substantial relation to the protection of the public health, safety and general welfare. *Lawton v. Stule*, 152 U. S. 133, 136, 37-8 L. ed. 585; *Thomas Cusack Co. vs. Chicago*, 242 U. S. 526, 531, 61 L. ed. 472. "All that is required to sustain a statutory classification of a reasonable basis on general lines for the division." *Mehlos v. Milwaukee*, 156 Wis. 591.

The courts will presume in favor of the constitutionality of a law, until the contrary clearly appears. *State v. Longlade County*, 193 Wis. 113. The rule is otherwise stated to be that "statutes are to be upheld by the courts unless they are unconstitutional beyond a reasonable doubt. *Appeal of Van Dyke*, 217 Wis. 528. If more than one construction is permissible, that which will sustain the legislation, will be adopted. *In Re Breidenbach*, 214 Wis. 54.

The contention is made that Chapter 414, Laws of 1947, imposes "involuntary servitude" contrary to the XIII Amendment. The Act—Sec. 111.64 Stats. provides:

> "Nothing in this subchapter shall be construed to require any individual employee to render labor or service without his consent, or to make illegal the quitting of his labor or service or the withdrawal from his place of employment unless done in concert or agreement with others. * * * ".

[fol. 82] Sec. 111.64 is a complete answer to the contention. *France Packing Co. v. Dailey* (C. C. A. 1948), 166 Fed. (2d) 751. *International Union v. Wisconsin E. R. Board*, 250 Wis. 550; *Society of New York Hospital v. Hanson*, 59 N. Y. S. (2d) 91, 97; *Van Riper v. Traffic Tel. Workers Fed.*

of N. J. (decided Sept. 10, 1948), 61 stl. (ad. sheets—Oct. 30, 1948) 570. The same contention as is here made was argued against the constitutionality of the compulsory arbitration law relating to public utilities in the state of New Jersey. The act is similar to the Wisconsin law. The court answered the contention as follows:

> "What preserves the employee's liberty under the constitution is not collective bargaining but is the right of the individual to refuse to work for the Telephone Company."

Continuing, the court held, p. 575:

> "The rights secured by the Constitution are secured to individuals and not to classes. The Union is the collective bargaining agent of 12,000 employees of the Company, under appointment by a majority of the employees in the bargaining unit. In the ordinary course, a committee of the Union agrees with the Company on wages and, I suppose, this agreement is ratified by a majority of the Union members. But in any group so large as this, there must be many who do not want the Union to be their bargaining agent and many others who, while willing to be so represented, are dissatisfied with the stipulated wage scale. The constitutional rights of such individuals are as precious as the rights of the majority. If the argument of the Union were sound, then this minority would be condemned to involuntary servitude when wages were fixed by the collective bargaining process. But I say again, their constitutional right is preserved because they can surrender their employment."

The utility is required by law to give adequate, uninterrupted service. It would not be able to discharge its public functions, if a strike occurs. Incalculable damage would result to the public. The utility and its employees are bound [fol. 83] alike by the provisions of the law. As pointed out in *Wilson v. New*, infra, the foregoing facts are known and accepted by the employee as conditions of his employment.

Tested by the foregoing principles, Chapter 414, Laws of 1947 is well within the permissible limits of legislative discretion, both as to the objective of the regulations and the methods employed for the accomplishment thereof.

The Supreme Court of the United States has recognized as valid the placing of employees of a public utility in a separate class for purposes of regulation. In *Wilson* v. *New*, 243 U. S. 352, 61 L. ed. 755, it was held:

> "(b) *As to the employee.* * * * whatever would be the right of an employee engaged in a private business to demand such wages as he desires, to leave the employment if he does not get them and by concert of action to agree with others to leave upon the same condition, such rights are necessarily subject to limitation when employment is accepted in a business charged with a public interest * * *."

In the briefs of counsel for plaintiff and upon the oral argument, certain hypothetical situations were propounded, in which it was claimed that Chapter 414, especially Sec. 111.62, would operate oppressively. The claimed inequalities will be adjudicated when actual cases arise which require a decision upon the points raised. *Wisconsin Telephone Co. v. Wisconsin E.R.B.* — Wis. — (decided Nov. 16, 1948); *Democrat Printing Co. v. Zimmerman*, 245 Wis. 406. The invalidity of Sec. 111.62, or any part thereof, would not invalidate the Act as a whole.

The provisions of the Act relating to conciliation and arbitration involve no unlawful delegation of judicial power.

[fol. 84] In *State ex rel. Ellis v. Thorne*, 112 Wis. 81, it was held that:

> "Sec. 2, art. VII, of the constitution, vesting all judicial power in matters of law or equity in certain courts, does not prohibit officers other than those holding judicial positions, strictly so called, from acting judicially. It only prohibits them from acting judicially in actions at law or in equity; that is, from doing those things which were done in actions at law or suits in equity, according to the system of jurisprudence which prevailed in this state at the time of the adoption of the constitution."

Also: *State ex rel. Meredith v. Lippels*, 112 Wis. 203; *Forest County v. Langlade County*, 76 Wis. 605; *Local 170 v. Gadola*, (Mich. 1948) 34 N. W. (2d) 71. In the latter case, the provisions of an otherwise similar law was held unconstitutional

on the ground that it attempted to confer *administrative* powers upon a Circuit Judge.

Neither does Chapter 414 involve an unconstitutional delegation of legislative power. The conciliator and arbitrator are purely *administrative* agencies acting under definite standards set forth in Sec. 111.57. *Klein v. Barry*, 182 Wis. 255. See, also, *Wisconsin Telephone Co. v. Wisconsin E.R.B., supra.* The determination is subject to judicial review. Sec. 111.60.

Similar power to administrative agencies, such as the Industrial Commission, Tax Commission, Boards of Assessment etc., have long been upheld by the Supreme Court. *Borgnis v. Falk Co.*, 147 Wis. 327; *Town of Holland v. Village of Cedar Grove*, 230 Wis. 177; *Greenbush v. Plymouth*, 230 Wis. 210.

Section 16, Art. VII, Wisconsin Constitution, which provides for "the regulation of tribunals of conciliation to be established in and for any township" with power to render [fol. 85] judgment to be obligatory upon the parties when they *voluntarily* submit their matters in difference to arbitration and agree to abide the judgment or assent thereto in writing,—is not applicable. The section is contained in Article VII which deals with the "Judiciary", and refers to controversies which are justic-able in actions at law or equity, cognizable by courts—not to an act of an administrative agency. *Wis. Tel. Co. v. Wis. E.R.B.*, supra. The settlement of a labor dispute was not in the minds of the framers of the constitution. Moreover, there is nothing in the section which precludes legislative action under the police power of the state, at least until the legislature has acted under the mandate of Section 16. Further, the section deals only with controversies in which the parties *voluntarily* submit the matters in difference and agree to be bound by the "judgment".

The contentions that the Act constitutes an invasion of executive power and of Sec. 9, Art. XIII are without substance.

The argument is advanced that the National Relations Board has assumed jurisdiction of the employment relations between the Transport Company and its employees and that the right to strike is conferred by the Federal Labor-Management Relations Act, 1947, and which, it is contended, supersedes the denial of the right in Chapter 414. The answer of the Transport Company *admitted* by

plaintiffs' demurrer (in the last above entitled action), alleges that in December, 1947, the National Board, pursuant to a written stipulation of the parties, conducted an "all-union" referendum and that the National Board did [fol. 86] not thereby assume *or exercise* general jurisdiction over said employees and, further, that the alleged "controversy" which resulted in the holding of said referendum ceased and terminated long before the commencement of this action. Further, that the National Board has not assumed jurisdiction over the present controversy.

The allegations of the amended complaint in the Gas Company case merely allege that the defendant company is engaged in Interstate Commerce and is therefore subject to the National Act.

Section 13 of the Taft-Hartley Law, 29 U.S.C.A. Par. 163, states:

> "Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike *or to affect the limitations or qualifications on that right.*" (Emphasis added.)

There is no conflict between Chapter 414 and the Taft-Hartley Act. The Wisconsin Act covers a field not included in the Federal Act. Its right to enact the regulations in the exercise of its police power is expressly recognized by Section 13, above quoted.

The Wisconsin Supreme Court has uniformly held that until and unless the National Labor Relations Board takes jurisdiction over a particular controversy, Congress intended to leave within the reserved power of the state the right to deal with such controversies. Unless these rulings of the state supreme court are reversed they represent the law of this state: *Wisconsin E. R. Board v. Algoma P. & V. Co.*, 252 Wis. 549, 32 N. W. 2d 417; *Allen-*[fol. 87] *Bradley Local 1111 v. Wisconsin E. R. Board* (1941) 237 Wis. 164, 295 N. W. 791; *Christoffel v. Wisconsin E. R. Board*, (1943) 243 Wis. 332, 10 N. W. 2d 197; *International Union, etc. vs. Wisconsin E. R. Board* (1944) 245 Wis. 417, 14 N. W. 2d 872.

The objectives of the Federal and State Acts are the same—namely, to substitute peaceful processes for force in the settlement of labor disputes. Collective bargaining

is likewise encouraged by the Wisconsin Act. Secs. 111.52, 111.53, 111.64.

The final contention is that the Transport Company and its employees (in the second action) are excluded by Sec. 115.51 (1) from the provisions of the Act. Sec. 115.51 (1) provides that a public utility employer shall include one "furnishing * * * public passenger transportation." It concludes with the statement that "this subchapter does not apply to railroads nor railroad employes."

Sec. 370.01 (1) provides that "all words and phrases shall be construed according to the *common* and approved usage of the language; * * *".

Webster defines a railroad as "a permanent road or way having a line of rails fixed to ties * * * providing a track for freight cars, passenger cars or coaches and other rolling stock designed to be drawn by locomotives or sometimes propelled by self-contained motors * * *". While on the other hand "the lighter electric street-car lines and the like are usually termed *railways*. In determining the meaning of "railroad" as used in the Act, it should "receive a [fols. 88-90] construction that will effectuate its purpose." *Cawker v. Meyer*, 147 Wis. 320, 326. "Public passenger transportation" is ordinarily by street railways. It is a matter of common knowledge that passenger transportation is carried on by street cars, gas buses and trackless trolleys. It would be absurd to say that the legislature intended to exclude street car transportation and to include only buses and trackless trolleys. To exclude street railways would emasculate the statute as to passenger transportation.

Further, Chapter 193 Stats. deals with *street railways* and Chapters 190-192 with ordinary steam *railroads*.

It is clear that the legislature had in mind the distinction between "railroads" and "street railways" in the enactment of Chapter 414. Further, the ordinary steam railroad is governed by the provisions of the Federal Railway Labor Act.

In *Local 170, Transport Workers v. Gadola* (Mich.) 34 N. W. (2d) 71, a Public Utilities Compulsory Arbitration Act was held unconstitutional on grounds not here involved. The case, however, contains data in point on the case at bar. Included in the opinion is a list of states which have recently enacted similar laws. In *Van Riper v. Traffic Tele-*

phone Workers, supra, the various contentions here made with respect to claimed violations of the Federal Constitution are considered.

For the reasons stated, the demurrer of the defendant in the action first above entitled will be sustained and the demurrer of plaintiffs in the second action will be overruled. Judgments may be entered declaring the rights and status of the parties in accordance with the foregoing.

Copies to: Max Raskin, Padway, Goldberg & Previant, Beatrice Lampert, Asst. Atty. Gen., Shaw, Muskat & Paulsen, Miller, Mack & Fairchild.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 91] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 4844

ARTHUR ST. JOHN, et al., Plaintiffs,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al., Defendants

OPINION—Filed April 28, 1950

Plaintiffs bring this action individually and as officers of Local 18, United Gas, Coke and Chemical Workers (CIO) (hereinafter called the "union"), upon behalf of all the union members who are employees of the corporate defendant. Plaintiffs seek a permanent injunction enjoining and restraining the enforcement of subchapter 3 of Chap. 111, Wis. Stats. of 1947,[1] sometimes referred to as the Public Utility Anti-Strike Law.[2]

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[1] The Wis. Stats. designate this section as subchapter III of Chap. 111. To avoid confusion we shall refer to this section as subchapter 3 of Chap. 111.

[2] Subchapter 3 of Chap. 111 contains a legislative declaration of policy that "the interruption of public utility service results in damage and injury to the public wholly apart from

[fol. 92] They also seek a declaratory judgment that said subchapter of the statutes is invalid. Defendants Gooding, Fitzgibbons and Rule are the individual commissioners comprising the Wisconsin Employment Relations Board. Defendant Fairchild is the Attorney General for the State of Wisconsin. The corporate defendant (hereinafter called the "company") is a public utility under Wisconsin law, and is the employer of approximately 770 men who are members of the union. The company's utility service is rendered in an area entirely within the State of Wisconsin; however it purchases a substantial portion of its supplies and materials outside the State, and it furnishes gas to manufacturing concerns that produce goods for interstate commerce.

Commencing in June, 1937, and annually thereafter including June, 1948, the union and the company entered into collective bargaining agreements. On August 1, 1943, the union was certified by the National Labor Relations Board as the exclusive bargaining representative for the employees of the company. The most recent contract expired on June 1, 1949.

In September, 1949, the union filed a petition with the National Labor Relations Board, charging that the company was guilty of an unfair labor practice by refusing to bargain with the union. The National Labor Relations Board did not take any action on this complaint. Thereafter the union and the company did engage in collective bargaining cover-

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the effect upon the parties immediately concerned and creates an emergency justifying action which adequately protects the general welfare." It also imposes upon employers and employees the duty of reaching agreements on wages and working conditions through collective bargaining. It authorizes the Wisconsin Employment Relations Board to appoint a conciliator when the bargaining process reaches a stalemate (Sec. 111.54) and, where interruption of essential service is likely, authorizes the Wisconsin Employment Relations Board to appoint arbitrators (Sec. 111.55). The award of the arbitrators, subject to judicial review is final and endures for one year (Secs. 111.59 and 111.60). Strikes are forbidden and are made a misdemeanor (Sec. 111.62). The Wisconsin Employment Relations Board is made responsible for the enforcement of the subchapter and is authorized to compel compliance by commencing an action in a circuit court.

ing wages, pensions and other conditions of employment, but no agreement was reached. The Wisconsin Employment Relations Board then appointed a conciliator whose efforts to bring the union and the company into agreement were unsuccessful. On October 3, 1949, the Wisconsin Employment Relations Board issued an order listing five names as a panel of arbitrators, and ordering the union and the company each to strike one name therefrom, pursuant to provisions of Sec. 111.55, Wis. Stats. The remaining three were to act as arbitrators. On October 4, 1949, the plaintiffs and other employees, acting in concert and agreement, left their employment and started picketing the premises of the company.

[fol. 93] On October 6, 1949, the union and the company agreed upon wages, hours, and other conditions of employment but did not agree upon the terms and conditions of the pension plan. The Wisconsin Employment Relations Board and the Attorney General, so the complaint herein alleges, threatened to compel the plaintiffs to submit the unresolved issues of pensions to arbitrators.

On October 13, 1949, in an action commenced in the Circuit Court of Milwaukee County, wherein the Wisconsin Employment Relations Board was plaintiff, the plaintiffs herein were enjoined from calling a strike, or going out on strike, or causing an interruption in the service of the company. It was further ordered that certain of the officers of the union notify all employees who had been called out on strike to resume their employment. This order was issued pursuant to subchapter 3 of Chap. 111. The Attorney General and the Wisconsin Employment Relations Board thereafter caused process to issue looking to the punishment of the plaintiffs and other employees for violating said injunction. The Attorney General likewise threatened to invoke criminal penalties.

In the case at bar, after putting in issue various allegations of the complaint, the defendants pleaded that prior to the commencement of the case at bar plaintiffs chose as their forum for the litigation of the same issues the Circuit Court of Milwaukee County, in which action, on demurrer, the court entered judgment that subchapter 3 of Chap. 111, Wis. Stats. of 1947, was constitutional and valid. Defendants plead such State court action as res judicata.

We proceed to a consideration of the defense of res judicata. The judgment of the Circuit Court of Milwaukee County, which is pleaded as a bar, provided in part as follows:

> "It Is Hereby Adjudged and Determined that Chapter 414, Laws of 1947, being Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947, is a valid and constitutional act, and does not violate nor conflict with any of the provisions of the Constitution of the State of Wisconsin, nor with any of the provisions [fol. 94] of the Constitution of the United States, nor with any amendment thereto, and does not conflict with the United States Labor-Management Relations Act of 1947, and does not deny to the plaintiffs nor to any of the employees of the defendant Milwaukee Gas Light Company represented by them, . . . any rights, privileges or protection secured to them under either of said Constitutions or said act of Congress: and that the plaintiffs, the defendant Milwaukee Gas Light Company, and its employees represented by the plaintiffs herein, are subject to and controlled by said Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947."

An appeal from this judgment was taken by the plaintiffs in that case to the Supreme Court of Wisconsin, which court affirmed the Circuit Court judgment. Plaintiffs did not appeal to the United States Supreme Court or seek other relief from the action of the Wisconsin Supreme Court. Since the time for appeal to the United States Supreme Court has long since elapsed, the judgment of the Circuit Court, affirmed by the Wisconsin Supreme Court, is conclusive. *Angel* v. *Bullington*, 330 U.S. 183, 189. See also: *Grubb* v. *Public Utilities Commission of Ohio*, 281 U.S. 470, 475; *Mitchell* v. *First National Bank of Chicago*, 180 U.S. 471, 480.

The judgment of the Circuit Court of Milwaukee County, affirmed by the Wisconsin Supreme Court, is res judicata, and bars a subsequent action in this court, if it falls within the rule that a judgment of a State court of competent jurisdiction is binding and conclusive as to all matters put in issue and decided in the State court, and bars a subsequent action in a federal court if the causes of action,

subject matter and parties are the same. *Angel* v. *Bullington*, supra, pp. 192-193; *Treinies* v. *Sunshine Mining Co., et al.*, 308 U.S. 66, 75-78. Indeed such a judgment is binding as to all relevant issues which could have been raised and litigated therein. *Heiser* v. *Woodruff, et al.*, 327 U.S. 726, 735; *Troxell, Administratrix* v. *Delaware, Lackawanna & Western Railroad Co.*, 227 U.S. 434, 440; *Reinkey* v. *Wilkins*, 172 Wis. 515, 520.

[fol. 95] We think it clear that the causes of action and the subject matter are the same in the two suits. The cause of action in the case at bar is based upon the same facts as in the State court action. This is so even though some of the actions which could only be considered in a prospective way by the State court have since come to pass. The fact that a strike was actually called since the State court judgment was rendered does not create a different situation. The allegations in the pleadings in the two cases are substantially the same. The facts necessary to sustain the two actions are the same. As for the subject matter, the issues in the case at bar and in the State court action arose from the claimed repugnancy of subchapter 3 of Chap. 111, Wis. Stats., to the federal Constitution and to the Labor-Management Relations Act of 1947, and those issues were decided against the union in the State court action. The questions essential to a determination herein are the same as those of the State court case.

It is true that the opinion of the Wisconsin Supreme Court contains some equivocal language which furnishes some foundation for the contention of plaintiffs herein that all of the issues were not squarely met. Nevertheless it is the action which the Supreme Court took which is important rather than any reasons which it might give for such action. The appeal was from the judgment of the Circuit Court. Included in the issues squarely raised were the claimed repugnancy of subchapter 3 of Chap. 111 to the federal Constitution and to the Labor-Management Relations Act of 1947. The Wisconsin Supreme Court was empowered to reverse, affirm or modify the Circuit Court judgment; it did not reverse or modify, but affirmed the judgment without any condition or qualification. The mandate of the Wisconsin Supreme Court did not affirm an order sustaining a demurrer, but rather it affirmed the judgment of the Circuit Court of Milwaukee County in that case. Moreover, it is not important whether we refer to the

judgment which was affirmed as a judgment of the Circuit Court or of the Supreme Court.

Plaintiffs' argument that all of the merits of the con- [fol. 96] troversy were not passed upon is conclusively answered in *Angel* v. *Billington, supra*, where the controlling opinion holds (p. 190):

> "It is suggested that the North Carolina Supreme Court did not adjudicate the 'merits' of the controversy. It is a misconception of *res judicata* to assume that the doctrine does not come into operation if a court has not passed on the 'merits' in the sense of the ultimate substantive issues of a litigation. An adjudication declining to reach such ultimate substantive issues may bar a second attempt to reach them in another court of the States. . . .
>
> "The 'merits' of a claim are disposed of when it is refused enforcement. If an asserted federal claim is denied enforcement on a professed local ground, but a so-called local ground which is subject to review here because it is in fact the adjudication of a federal question, then the 'merits' of that claim were adjudicated in the only sense that adjudication of the 'merits' is relevant to the principles of *res judicata*. . . ."

As the State court litigation, in both the Circuit Court and Supreme Court, involved questions and issues identical to those present and raised in the instant action, and the plaintiffs not having appealed to the United States Supreme Court, it follows that, if the parties to each of the actions are the same, plaintiffs herein are precluded from further litigating the questions and issues in this action under the doctrine of res judicata.

We now focus our attention on the question whether the parties to the State court action were the same as the parties in the case at bar. Manifestly they are not identical. Certain individuals are named in the pleadings in the case at bar, both as plaintiffs and defendants, who were not thus named in the State court action. The union and Thomas Lansing, its then president, were plaintiffs in the State court action and they are also plaintiffs in the case at bar. The parties plaintiff are not changed because the amended complaint herein now names Arthur St. John,

the current president of the union, and lists other officers of the union and members of its bargaining committee. Plaintiffs in both cases are the union and the officers thereof who represent the membership. We hold that the parties [fol. 97] plaintiff are the same in both actions.

The Wisconsin Employment Relations Board and the Milwaukee Gas Light Company were named defendants in both actions. In addition, the three individuals who are the Wisconsin Employment Relations Board are named individually in the case at bar, as well as Thomas E. Fairchild, the Attorney General of the State of Wisconsin. However, the three members of the board are sued in the present action only as members of the board, and not in their capacity as private citizens. The Attorney General is sued only in his official capacity, that of attorney representing the Wisconsin Employment Relations Board. We hold that the parties defendant are the same in both actions.

The fact that the union seeks an injunction in the case at bar in addition to the declaratory judgment sought in both cases does not prevent the judgment in the State court action from operating as an estoppel in this court. 50 C.J.S., Judgments, Sec. 900 (a). A change in the form or measure of the relief asked in the complaint in a second cause of action does not preclude the application of the doctrine of res judicata. 30 Am. Juris., Judgments, Sec. 176.

A valid distinction cannot be drawn between a judgment entered in a State court action sustaining a demurrer to a complaint and a judgment rendered after a trial upon the merits. In *Northern Pacific Railway Co. v. Slaght*, 205 U. S. 122, 130, the court stated:

> ". . . It is well established that a judgment on demurrer is as conclusive as one rendered upon proof."

In *Ellis v. Northern Pacific Railroad Co.*, 80 Wis. 459, 465, the court said:

> ". . . It is sufficient to say that by repeated decisions it has become the settled law in this State that the decision of this court upon a demurrer is conclusive upon the questions legitimately involved and is res adjudicata in that case. . . ."

In *Lewko v. Chas. A. Krause Milling Co.*, 219 Wis. 6, 8, the court said:

> "The plaintiff first argues that a decision sustaining a demurrer is not res judicata because there has been no trial upon the merits. In this contention it is considered that the plaintiff is in error. . . ."

[fol. 98] It follows that each member of the union upon whose behalf the State court action was brought is bound by the judgment that was entered in that action. This court has no discretion to pass upon the merits of the important questions raised in the case at bar, and *ignore* the defense of res judicata. In 30 Am. Juris., Judgments, Sec. 254, it is said, at p. 983:

> ". . . Where the prior judgment is properly brought to the attention of the court, the question whether the doctrine of res judicata should be applied is one of law, and not for the discretion of the court."

The full faith and credit clause of the United States Constitution (Art. IV, Sec. 1) applies to federal courts. 28 U.S.C. 7138. Federal courts are required to give full faith and credit to the judgments of State courts. *Davis v. Davis*, 305 U. S. 32, 39-40.

The defendants' defense of res judicata must be sustained. Formal findings of fact and conclusions of law, together with formal judgment, will be prepared by counsel for defendants and submitted to counsel for plaintiffs for approval as to form, and if so approved then to the court for signatures and entry; but if not approved, then, upon notice, to the court for settlement, signatures and entry.

Dated at Milwaukee, Wisconsin, this 28th day of April, A. D. 1950.

(Sgd.) F. Ryan Duffy, U. S. Circuit Judge. (Sgd.) Patrick T. Stone, U. S. District Judge. —— ——, U. S. District Judge.

[fol. 99] DISSENTING OPINION OF HONORABLE ROBERT E. TEHAN, UNITED STATES DISTRICT JUDGE

The majority opinion states the facts which brought this action to this court and concludes that the plaintiffs have already had a complete adjudication in the State courts of all of the issues they raise here and thus are now barred from litigating these issues by the doctrine of res judicata. Our dissent is prompted by the belief that the issues raised in this action were not finally adjudicated in the State action and that plaintiffs are entitled to an adjudication of these issues.

In the complaint which plaintiffs filed in the Circuit Court of Milwaukee County, Wisconsin, plaintiffs alleged that subchapter 3 of Chap. 111, Wis. Stats., 1947 was void in that it was in conflict with the Wisconsin Constitution, the Federal Constitution and the Labor Management Relations Act.

The judgment of the Circuit Court adjudicated each of the issues raised in the plaintiffs' complaint in that action. This judgment was then appealed to the Supreme Court of the State of Wisconsin, and that court issued an opinion and affirmed the judgment of the Circuit Court.[3] The majority opinion herein holds that the Circuit Court judgment, affirmed by the Wisconsin Supreme Court, is conclusive to bar plaintiffs in this action.

I question first the assertion that the judgment of the Circuit Court of Milwaukee County is a bar in this action. When a party appeals from a judgment of a Circuit Court of Wisconsin to the Wisconsin Supreme Court, and the Circuit Court's judgment is affirmed, is the judgment which then determines the rights of the parties to that action the [fol. 100] judgment of the Circuit Court? The Wisconsin Supreme Court has said that it is not.

In the case of *Ean v. The Chicago, Milwaukee & St. Paul R. Co.*, 101 Wis. 166, the Supreme Court considered the effect of its affirmance of a Circuit Court judgment. In that instance, the Supreme Court had affirmed a judgment of an action commenced in the superior court of Milwaukee County. After the appeal was determined, the cause was remanded. Then, within one year of the date of the entry of the judgment in the superior court, that court entered

[3] *United G., C. & C. Workers v. Wis. E. R. Board*, 255 Wis. 154, 38 N. W. (2d) 692.

an order vacating its judgment and permitted the plaintiff to plead further. The order purported to be made under the provisions of R. S. 1878, sec. 2832. The provisions of this section, according to the Supreme Court opinion, were "substantially to the effect that the court or judge may, in discretion and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment against him 'through his mistake, inadvertence, surprise or excusable neglect'." The court held that the section applied only to judgments of the Circuit Court and "not to those which by operation of law have become judgments of this court." The court clearly held that when a mandate is remanded and the lower court enters a final judgment in accordance therewith, "the judgment so entered is, in legal effect, the judgment of this court. It is none the less true in cases where there is an affirmance than when some other directions are given." In other words, the court noted that after an appeal, the judgment in any case is the judgment of the Supreme Court and that the legal consequences of that judgment are not necessarily identical as those which attach to the lower court judgment. To the same effect see *Crowns v. Forest Land Co.*, 100 Wis., 554 and *Hoan v. Journal Co.*, 241 Wis. 483. Thus we see that when a judgment of the Circuit Court is considered by the Supreme Court and the Supreme Court renders an opinion as to the propriety of that judgment, the Supreme Court has, in legal effect, issued a new judgment which becomes the judgment of that case. Therefore, it is only the judgment of the Supreme Court which can be pleaded in bar under the doctrine of res judicata.

[fol. 101] The full faith and credit clause of the United States Constitution requires that in any particular instance a Federal Court must give to a judgment of a State Court the same legal effect as the courts of that state would give to it. *Covington v. First National Bank*, 198 U. S. 100; *Jarrard v. Southeastern Shipbuilding Corporation*, 163 F. (2d) 960. In the instant case, we must consider the judgment which is pleaded in bar in the light in which it should be considered by a Circuit Court of Wisconsin had the plaintiffs commenced this action in such a court. We think that in striving to determine what legal effect the courts of Wisconsin would give to the judgment now pleaded in bar, it is proper that we look to the opinion which the Supreme

Court rendered at the time it handed down its judgment in that case. In so doing we recognize that there is a distinction between a judgment or findings of fact and on opinion. 49 C. J. S. sec. 4. But we believe that since an opinion explains the basis in law upon which the judgment is rendered, it is a proper guide in determining what the legal effect of that judgment should be. It is proper for a Federal Court to examine the opinion of a State Court to see what issues were determined. *San Jose Land and Water Co. v. San Jose Ranch Co.*, 189 U. S. 177; *Gross v. United States Mortgage Co.*, 108 U. S. 477; *Carson v. Three States Lumber Co.*, 142 F. 893, affirmed 149 F. 377

The majority opinion herein dismisses the Supreme Court opinion with the observation that it contains "some equivocal language which furnishes some foundation for the contention of plaintiffs herein that all of the issues were not squarely met." They pass over language which seems to us clearly to indicate that the Supreme Court felt it should not pass on certain constitutional questions until a factual situation was presented to the Court at a later date. The majority opinion places complete reliance on the words "Judgment Affirmed", which appear at the end of the opinion.

If the Supreme Court had merely affirmed without opinion there would be no dissent, and if the Supreme Court's opinion had discussed only one of the constitutional questions [fol. 102] and remained silent on the other questions raised by plaintiffs, we would have reluctantly concurred.

The clear language of the Supreme Court's opinion on its position on certain constitutional questions requires, in my mind, the same consideration and treatment that was given by a distinguished court in the case of *Moran Towing and Transportation Co., Inc. v. Navigazione Libera Triestina, S.A.*, 92 F. (2d) 37. We think the Second Circuit Court of Appeals was there confronted with the same problem we face here. The Moran Companyhad furnished tugboat service and a tug master as a pilot for the N.L.T. under a contract which provided:

> "'When the captain of any tug engaged in the service of assisting a vessel which is making use of her own propelling power goes on board said vessel or any other licensed pilot goes on board said vessel, it is understood and agreed that said tugboat captain or any other li-

censed pilot becomes a servant of the owner in respect to the giving of orders to any of the tugs engaged in the assisting service and in respect to the handling of said vessel and neither the tugs or their owners or agents shall be liable for any damage resulting therefrom.' "

During the maneuvering of the vessel, property of The Robins Company was damaged and it sued Moran and N. L. T. in the New York State Courts for damages. The trial court found negligence on the part of the pilot, directed judgment for The Robins Company against Moran, and dismissed the complaint against N.L.T. The trial judge filed an opinion which was made part of the judgment roll in the State Court in which he indicated that he adjudged that Moran could not divest itself of liability to a third person by means of such a contractual provision and also that the contractual provision would not relieve Moran even as to N.L.T. because the tug master who performed the pilot duties was not a licensed pilot such as the clause called for.

An appeal was taken from this judgment to the New York Appellate Division which affirmed the judgment without opinion. Then an appeal was taken to the Court of Appeals which also affirmed the judgment and issued an [fol. 103] opinion. Thereafter, Moran paid the judgment and brought action in Federal Court against N.L.T. to recover the amount of the judgment and its disbursements, claiming that N.L.T. was an indemnitor under the terms of the "pilotage clause". The trial court dismissed the libel on the ground that the issue of liability for the acts of the pilot had been determined by the State Court and could not again be litigated. This judgment was appealed to the Circuit Court of Appeals, and it is the opinion of this court, composed of Circuit Judges Learned Hand, Augustus N. Hand and Harrie B. Chase (the opinion was written by Augustus Hand) which we cite in support of our position. The court looked to the language of the State Court opinions to determine what it was that the trial court and then the Court of Appeals had decided. It concluded that while the Court of Appeals had affirmed the judgment of the trial court, the language which the Court of Appeals used in its opinion indicated that it did not agree with the total adjudication of the trial court. This conclusion was based upon the assumption that it was proper to look to the opinion of the State Courts to determine what was there

decided. The propriety of this assumption was discussed by the court.

> "The appellee, however, cites Russell v. Russell, 134 F. 840 (C.C.A. 3), and Oglesby v. Attrill, 20 F. 570 (Wallace, J., in U.S. Circuit Court), as holding that an unconditional affirmance of a judgment by an appellate court, though rendered on entirely different grounds or only on some of the grounds upon which the decision of the lower court was rendered, leaves the questions determined by the lower court as res judicata in all respects. To treat as controlling the findings of a trial court when the appellate court upsets or disregards them and renders a decision of affirmance on different grounds furnishes parties to other litigations affected by the decision a false guide. There seems to be a paucity of authority on this questions, and with all due respect we cannot subscribe to such a formal treatment of the situation. * * *"

We, too, feel it is not proper to deprive parties of substantial rights by "a formal treatment of the situation".

In the Moran case the Circuit Court of Appeals did not hesitate to look to the opinion of the State Appellate Court to determine that the judgment of the appellate court was [fol. 104] different than that of the State trial court. So in the instant case we look to the opinion of the Wisconsin Supreme Court which, to us, indicates clearly that its judgment was different than that rendered by the circuit court.

Let us now examine the opinion of the Wisconsin Supreme Court in this case in the light of the Moran case. The plaintiff public utility employees and their union claimed they were aggrieved by an act of the Wisconsin legislature and commenced an action for declaratory relief, alleging that the act of the legislature was violative of their rights under the Constitutions of the United States and State of Wisconsin and repugnant to the Labor Management Act of 1947. The defendants demurred and the circuit court sustained the demurrer and entered judgment finding against plaintiffs on each of these grounds. The matter was appealed to the Wisconsin Supreme Court and that court, after reciting the facts, began its opinion with the following language:

> "We are first confronted with a fundamental rule of law that the constitutionality of a statute is not to be

determined as a hypothetical question or upon assumed facts or unreal possibilities. The court should not anticipate a question of constitutional law before it is to be applied to the precise facts before it and should not attempt to test the operation of a law under every conceivable set of circumstances. This rule is illustrated by the following quotations from prior decisions of this court:

" 'Sound judicial policy precludes the court from considering the question of the constitutionality of a legislative act unless a decision respecting its validity is essential to the determination of some controversy calling for judicial solution.' *State ex rel. Rosenheim v. Frear*, 138 Wis. 173, 176, 119 N. W. 894.

" 'The legislature, subject to the constitutions of the United States and of this state, is supreme in its particular field, and this court will not declare laws unconstitutional unless it clearly appears beyond reasonable doubt that they contravene constitutional provisions. See *Payne v. Racine*, 217 Wis. 550, 259 N. W. 437; *Petition of Breidenbach*, 214 Wis. 54, 252 N. W. 366; *Doering v. Swoboda*, 214 Wis. 481, 253 N. W. 657; *State ex rel. Carnation M.P. Co. v. Emery*, 178 Wis. 147, 189 N. W. 564, and the numerous earlier decisions cited therein.' *State ex rel. Atty. Gen. v. Wisconsin Constructors*, 222 Wis. 279, 284, 268 N. W. 238.

[fol. 105] " 'A constitutional question will not be decided until it is brought directly in issue by the facts involved in the instant case.' *Democrat Printing Co. v. Zimmerman*, 245 Wis. 406, 411, 14 N. W. (2d) 428.

"Therefore, upon this record, we can only determine whether or not ch. 414, Laws of 1947, is a valid and constitutional enactment. The plaintiffs contend that it is not because it contains unlawful delegations of legislative and judicial powers. * * *"

The court's opinion proceeds to a discussion of the questions of delegation of legislative and judicial powers (neither of which issues is involved in these proceedings), decides the issue of delegation of legislative powers, and continues with the following language:

"Upon the record here there is no question of the delegation of judicial power. This question and other

contentions and arguments of the plaintiffs can be disposed of best when a case involving a particular question is presented and fully argued. If any person or agency, in the enforcement of the law, should attempt to usurp unlawful legislative or judicial powers there is an adequate remedy."

The Wisconsin Court's opinion in effect says: We will not decide the principal constitutional objections raised by the plaintiffs. We will only decide the question of whether the statute in question involves an unlawful delegation. The door, however, is not closed on your grievances. At a more propitious time and place, when a matured fact situation has developed, you will have your day in court.

Abbreviating the court's own language, it said:

"The court should not anticipate a question of constitutional law before it is to be applied to the precise facts before it and should not attempt to test the operation of a law under every conceivable set of circumstances. * * * Therefore, upon this record, we can only determine whether or not (the statute) is a valid and constitutional enactment. * * * This question (delegation of judicial power) and other contentions and arguments of the plaintiffs can be disposed of best when a case involving a particular question is presented and fully argued. * * *"

Such language would never have been used by a court which did not conclude that a final disposition of the issues again raised in these proceedings was open to a future de-
[fol. 106] termination such as sought here.

We must also remember that the action in the State court was one for declaratory judgment. A judgment resulting from a declaratory judgment action is not res judicata to issues which were not actually determined. *Restatement of Judgments*, Sec. 77, Comment b. states:

"*Effect of declaratory judgment on subsequent controversies.* The effect of a declaratory judgment in subsequent controversies between the parties depends upon the scope of the declaration of rights made by the judgment. As to matters declared by the judgment, the parties are precluded from relitigating them; as to

matters not declared by the judgment, although a declaration might have been made as to them, the parties are not so precluded.

"Where a plaintiff seeks a declaratory judgment, he is not seeking to enforce a claim against the defendant. He is seeking rather a judicial declaration as to the existence and effect of a relation between him and the defendant. The effect of the judgment, therefore, unlike a judgment for the payment of money, is not to merge a cause of action in the judgment or to bar it. The effect of a declaratory judgment is rather to make res judicata the matters declared by the judgment, thus precluding the parties to the litigation from relitigating these matters."

The majority opinion places great reliance on the case of *Angel v. Bullington*, 330 U. S. 183. I feel that the Angel case is clearly distinguishable from the case at bar. The majority opinion in the Angel case held that the North Carolina Supreme Court adjudicated all of the federal issues involved when it ruled that it had no jurisdiction to consider the claim of Bullington. In other words, when the North Carolina Court ruled that a state statute removed from North Carolina courts jurisdiction to consider Bullington's claim, there was implicit in that ruling the determination that the state statute was constitutional. I think it is impossible to find in the Wisconsin Supreme Court's statement, that certain issues are not before it because a proper factual situation has not developed, any implicit ruling that the Wisconsin statute is not in conflict with the Federal Constitution or the Labor Management Relations Act.

[fol. 107] Another clear basis of distinction rests in the fact that the action before the Wisconsin State court, unlike the Angel case, was one seeking a declaratory judgment, and that a declaratory judgment, as noted in *Restatement of Judgments*, sec. 77, is conclusive only as to matters actually determined and not as to those which might have been determined.

The plaintiffs in the instant case went first to the Wisconsin courts to obtain a ruling on the validity of the Wisconsin statute. The Wisconsin Supreme Court, in my opinion, denied them a complete ruling at that time, but held open the door of the court for their return at some later date when the factual situation warranted such a return. Following

this a strike occurred and the challenged statute was put into operation. Plaintiffs then came to this court and asked for a ruling on the validity of the statute. This we have denied them by the application of res adjudicata. The doctrine of res adjudicata is a wholesome one, but I do not believe it was ever intended to work such a result.

The decision of this court has not only refused them that ruling, but by holding that the Wisconsin decision was res judicata on all the issues raised here, are we not then closing the door to the Wisconsin courts that the Supreme Court of the state held open? There seems substantial authority for the proposition that this court's ruling on the question of res judicata, if it becomes final, will, in turn, be res judicata on that issue and thus bar the plaintiffs from ever returning to the Wisconsin court. *Freeman on Judgments*, 5th Ed., p. 1498.

Dated, Milwaukee, Wisconsin, this 28th day of April, A. D. 1950.

(S.) Robert E. Tehan, U. S. District Judge.

[fol. 108] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN

Civil Action No. 4844

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 14, 1950

The above entitled action having come on for trial before the United States District Court for the Eastern District of Wisconsin, on November 28th, 1949, the Honorable F. Ryan Duffy, Patrick Stone and Robert E. Tehan, Judges presiding, and the plaintiffs appearing by Max Raskin and Wm. F. Quick, their attorneys and the defendants, Wisconsin Employment Relations Board and L. E. Gooding, J. E. Fitzgibbon, and Henry C. Rule appearing by their attorney, Thomas E. Fairchild, and the defendant Milwaukee Gas Light Company appearing by Miller, Mack & Fairchild, by Gilbert Hardgrove, their attorneys, and the defendant

Thomas E. Fairchild appearing in proper person, and a [fol. 109] Second Stipulation of Facts having been filed and the court having heard the arguments and received briefs of all parties, and being fully advised in the premises, does hereby make the following findings of fact and conclusions of law.

Findings of Fact

1. That the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00) pursuant to Section 1331, of Title 28 of the U.S.C.A.

2. That the plaintiff, Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and hereinafter referred to as the union, is an unincorporated association of employees employed in the production, maintenance, operation, construction and meter reading, of approximately seven hundred seventy (770) in number, all of whom are employed with the defendant, Milwaukee Gas Light Company, and that the office of the said union is in the city of Milwaukee, Milwaukee County, Wisconsin; that it is a labor organization as defined in Section 2-(5) of the Labor Management Relations Act of 1947.

3. That the plaintiff, Chester Walczak, is a citizen of the United States, and a resident of the city and county of Milwaukee, Wisconsin, and is the International Representative of said union.

4. That the plaintiff, Arthur St. John, is a citizen of the United States, and a resident of Waukesha County, Wisconsin, and is the president of the said union. That he is an employee of the Milwaukee Gas Light Company.

5. That the plaintiff, Al Fuhrman, is a citizen of the United States, and a resident of Milwaukee County, Wisconsin, and is the vice president of the said union. That he is an employee of the Milwaukee Gas Light Company.

6. That the plaintiff, Emil Heimsch, is a citizen of the [fol. 110] United States, and a resident of Milwaukee, Wisconsin, and is the Chairman of the Bargaining Committee of the union. That he is an employee of the Milwaukee Gas Light Company.

7. That the plaintiff, Thomas Lansing, is a citizen of the United States, and a resident of Milwaukee, Wisconsin, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company.

8. That the plaintiff, John F. Sheehan, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company.

9. That the plaintiff, E. F. Regner, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company.

10. That the plaintiff, Edward P. Regan, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company.

11. That the plaintiff, La Moine S. Cardinal, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, and is a member of the Bargaining Committee of said union. That he is an employee of the Milwaukee Gas Light Company.

12. That the plaintiff, Gordon Donnelly, is a citizen of the United States, and is a resident of Milwaukee, Wisconsin, and is the recording secretary of said union. That he is an employee of the Milwaukee Gas Light Company.

13. That the defendant, L. E. Gooding, is a Commissioner of the Wisconsin Employment Relations Board, and duly [fol. 111] appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Fond du Lac, Fond du Lac County, Wisconsin. The defendant, J. E. Fitzgibbon, is a Commissioner of the Wisconsin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and a resident of the city of Milwaukee, Milwaukee County, Wisconsin. The defendant, Henry C. Rule, is a Commissioner of the Wiscon-

sin Employment Relations Board, and duly appointed and qualified to act as such Commissioner, and is a citizen of the United States, and resident of the city of Eau Claire, Eau Claire County, Wisconsin. That all of said defendants constitute the Wisconsin Employment Relations Board, which has offices at 110 East Wisconsin Avenue, Milwaukee, Wisconsin. That said Wisconsin Employment Relations Board is established pursuant to and under the Statutes of the state of Wisconsin, 111.03, Wis. Stats. of 1947, and is composed of the aforesaid commissioners; that said Board has for its duty the enforcement and compliance with sub-chapter 3 of chapter 111 of the Laws of the State of Wisconsin titled "Public Utilities" as set forth in sections 111.50 through 111.64 Wisconsin Statutes of 1947.

14. That the defendant, Thomas E. Fairchild, is the duly elected, qualified, and acting Attorney General of the State of Wisconsin, and as such is charged with the enforcement of the laws of the State of Wisconsin, is a citizen of the United States and is a resident of the Village of Verona, Dane County, Wisconsin.

15. That the members of the union, including the plaintiffs, have assembled and associated themselves in the said union for the purpose of collective bargaining and otherwise dealing with the defendant company concerning hours of employment, rates of pay, pensions, working conditions, grievances arising out of employment, and for other mutual [fol. 112] aid and protection, and by such means to improve their economic and social conditions as citizens of the United States.

16. The Labor Management Relations Act of 1947, adopted by the Congress, is a law regulating commerce as set forth in Section 101 and Section 204 of the Act as amended. That since 1937, to August 1st, 1943, the defendant company recognized the plaintiff union as the exclusive bargaining representative for all of its employees performing production and maintenance work, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment, and that on August 1st, 1943, the plaintiff union was duly certified by the National Labor Relations Board, acting under the National Labor Relations Act of 1935, as the exclusive bar-

gaining representative for all of the employees of the defendant company in said unit, for the purpose of bargaining with respect to rates of pay, hours of employment, and other conditions of employment.

17. That commencing with June, 1937, and annually thereafter, including June, 1948, the plaintiff union and the defendant company entered into collective bargaining agreements for wages, hours of employment, and other working conditions of all of the employees represented by the said union.

18. That the defendant company is a Wisconsin corporation, and is a public utility employer with offices located at 626 East Wisconsin Avenue, Milwaukee, Wisconsin; and is primarily engaged in the furnishing of illuminating and heating gas to the general public in the cities of Milwaukee, West Bend, West Allis, Wauwatosa, Port Washington and Hartford, and the villages of Shorewood, West Milwaukee, Whitefish Bay, River Hills, Fox Point, Menomonee Falls, Grafton, Slinger, Thiensville, Germantown, Saukville and Jackson, and the townships between the City of Milwaukee and the said outlying cities and villages in the State of Wisconsin. The total franchise area served exceeds five hundred square miles. The total population of [fol. 113] the area is nearly eight hundred thousand The number of customers exceeds two hundred thousand.

19. That the plaintiffs bring this action on behalf of themselves and all others similarly situated, that is to say, the members of the union who are also employees of the defendant company and are authorized so to do.

20. That on or about September 3, 1948, the plaintiff Local 18, United Gas, Coke & Chemical Workers of America commenced an action in the circuit court for Milwaukee County, Wisconsin, as plaintiff against the Wisconsin Employment Relations Board and the Milwaukee Gas Light Company, two of the defendants in the above entitled action, praying the court to determine and declare the rights of the parties, and to declare subchapter 3 of Chapter 111 of the Wisconsin Statutes of 1947 unconstitutional and invaled, and to give such further relief by way of declaration of the rights of the parties as might be lawful, just and proper.

21. That on or about October 13, 1948, the summons in said action so commenced in the circuit court for Milwaukee County was amended by adding thereto as one of the plaintiffs Thomas Lansing, who is one of the plaintiffs in this action.

22. That at the same time an amended complaint was served therein. As appears by said amended complaint, said plaintiff union brought said action as the representative of the employees of the defendant, Milwaukee Gas Light Company, being specifically authorized so to do; and that it was therein alleged that said Thomas Lansing had, through many years, built up a property right in his employment commonly known as "seniority", and it was therein charged that sections 111.62 and 111.63 of said chapter 111 of the Wisconsin Statutes of 1947 threatened to destroy said property right by denying him the full protection of the law.

23. That on November 1, 1948, the defendant Milwaukee [fol. 114] Gas Light Company interposed in said action a demurrer which, omitting venue, title and signature, reads as follows:

> "Now comes the Milwaukee Gas Light Company, one of the defendants in the above entitled action, by Miller, Mack & Fairchild, its attorneys, and demurs to the amended complaint therein on the ground that it appears on the face of said amended complaint that the same does not state facts sufficient to constitute a cause of action."

24. That on or about October 29, 1948, the defendant, Wisconsin Employment Relations Board interposed in said action a demurrer which, omitting venue, title and signature, reads as follows:

> "Now comes the Wisconsin Employment Relations Board, one of the respondents above named, by its attorneys Grover L. Broadfoot, Attorney General, Stewart G. Honeck, Deputy Attorney General, and Beatrice Lampert, Assistant Attorney General, and demurs to the amended complaint in the above entitled action on the grounds that it appears on the face of said amended complaint that the same does not state facts sufficient to constitute a cause of action."

25. That said action was brought to trial on the issues of law raised by the separate demurrers of the defendants therein to said amended complaint, and was heard on the 22nd and 26th days of November, 1948, all of the parties to said action having been represented in court by their respective counsel.

26. That on January 6, 1949, the said circuit court for Milwaukee County, Wisconsin, being of the opinion that subchapter 3 of chapter 111 of the Wisconsin Statutes of 1947 was a valid act, and not in violation of nor in conflict with any provision of the Constitution of the State of Wisconsin, nor the Constitution of the United States, nor of any amendment thereto, and not in conflict with the United States Labor Management Relations Act of 1947, and being further of the opinion and having determined that any further amendment of said amended complaint would be unavailing, [fol. 115] ordered that said demurrers to the amended complaint in said action be sustained, and that judgment be entered declaring the rights of the parties and denying the prayer of the plaintiffs, for further relief.

27. That on January 6, 1949, said circuit court for Milwaukee County, Wisconsin entered a judgment as follows:

> "It is hereby Adjudged and Determined that Chapter 414, Laws of 1947, being Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947, is a valid and constitutional act, and does not violate nor conflict with any of the provisions of the Constitution of the State of Wisconsin, nor with any of the provisions of the Constitution of the United States, nor with any amendment thereto, and does not conflict with the United States Labor Management Relations Act of 1947, and does not deny to the plaintiffs nor to any of the employees of the defendant Milwaukee Gas Light Company represented by them . . . any rights, privileges or protection secured to them under either of said Constitutions or said act of Congress; and that the plaintiffs, the defendant Milwaukee Gas Light Company, and its employees represented by the plaintiffs herein, are subject to control*led* by said Subchapter III of Chapter 111 of the Wisconsin Statutes, 1947."

28. That an appeal was taken from the judgment so entered on January 6, 1949, by the plaintiffs in said action to the supreme court of the state of Wisconsin; that thereafter such proceedings were had in said supreme court of the state of Wisconsin; that said judgment of said circuit court for Milwaukee county was affirmed, such judgment of affirmance having been entered on July 12, 1949; and that the remittitur from said supreme court was returned to and filed in the office of the clerk of the circuit court for Milwaukee county, Wisconsin, with no accompanying opinion, declaring that, on consideration of the appeal, it was ordered and adjudged by said supreme court that the judgment of said circuit court of Milwaukee county be and the same was affirmed.

29. That the opinion of the Supreme Court of Wisconsin with respect to the said appeal was filed in the office of the [fol. 116] clerk of that court on July 12, 1949, and is reported under the title: *United Gas, Coke & Chemical Workers of America, Local 18, C. I. O. and another vs. Wisconsin Employment Relations Board and another*, 255 Wis. (Advance Sheets) 154-163, 38 N. W. (2d) (Advance Sheets) 692-697.

30. That no application by appeal, writ of error, certiorari or otherwise to have said judgment reviewed by the supreme court of the United States of America has been made.

Conclusions of Law

1. All of the parties in the action at bar were parties, directly or by representation, in the state court action mentioned and referred to in the answers of the defendants in the action at bar.

2. All of the parties in the action at bar upon whom any judgment to be entered therein could operate were parties, directly or by representation, in said court action.

3. All of the issues in the action at bar were adjudicated in the said state court action.

4. The causes of action in both actions being the same and the parties being identical or in privity, the judgment of the circuit court of Milwaukee county was affirmed by the Supreme Court of Wisconsin is *res adjudicata* and conclusive

of the parties not only as to all the issues adjudicated in that action but as to all issues pertaining to the constitutionality of the statute as applied to the plaintiffs that might have been raised.

5. The declaratory judgment of the circuit court of Milwaukee county, as affirmed by the Supreme Court of Wisconsin introduced into the record in this case, is *res adjudicata* as to all the issues sought to be raised in this action and consequently bars the maintenance of this action.

[fol. 117] 6. The defendants are entitled to judgment dismissing the above entitled action.

Let judgment be entered accordingly.

Dated June 14th, 1950.

By the Court: (S.) F. Ryan Duffy, U. S. Circuit Judge; (S.) Patrick J. Stone, U. S. District Judge.

I dissent from the above findings of fact and conclusions of law for reasons set forth in my dissenting opinion on file herein.

(S.) Robert E. Tehan, U. S. District Judge.

[fol. 118] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 4844

ARTHUR ST. JOHN, CHESTER WALCZAK, AL FUHRMAN, GORDON DONNELLY, Emil Heimsch, Thomas Lansing, John F. Sheehan, E. F. Regner, Edward P. Regan, La Moine S. Cardinal, Individually, and as Officers of Local 18, United Gas, Coke and Chemical Workers of America, Affiliated with the Congress of Industrial Organization, and Local 18, United Gas, Coke and Chemical Workers of America (CIO), Plaintiffs,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, J. E. Fitzgibbon, and Henry C. Rule, Individually and as Commissioners Constituting the Wisconsin Employment Relations Board, and Thomas E. Fairchild, Individually and as Attorney General of the State of Wisconsin, and the Milwaukee Gas Light Company, a Wisconsin Corporation, Defendants

JUDGMENT—Filed June 14, 1950

The above entitled action having come on for trial before the United States District Court for the Eastern District of Wisconsin, on November 28th, 1949, the Honorable F. Ryan Duffy, Patrick Stone and Robert E. Tehan, Judges presiding, and the plaintiffs appearing by Max Raskin and Wm. F. Quick, their attorneys and the defendants, Wisconsin Employment Relations Board and L. E. Gooding, J. E. Fitzgibbon, and Henry C. Rule, appearing by their attorney, Thomas E. Fairchild, and the defendant, Milwaukee Gas Light Company appearing by Miller, Mack & Fairchild, by Gilbert Hardgrove, their attorneys, and the defendant, [fols. 119-121] Thomas E. Fairchild appearing in proper person, and the court having on the 14th day of June, 1950, filed its Findings of Fact, Conclusions of Law and Directions for Judgment,

Now upon all the proceedings herein, It is

Adjudged and decreed that the above entitled action be and the same is hereby dismissed.

Dated June 14, 1950.

By the Court: F. Ryan Duffy, U. S. Circuit Judge; Patrick T. Stone, U. S. District Judge; Robert E. Tehan, U. S. District Judge.

[fol. 122] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

PETITION FOR APPEAL—Filed August 8, 1950

Considering themselves aggrieved by the final judgment of this court entered on June 14th, 1950, Arthur St. John, Chester Walczak, Al Fuhrman, Gordon Donnelly, Emil Heimsch, Thomas Lansing, John F. Sheehan, E. F. Regner, Edward P. Regan, La Moine S. Cardinal, individually and as officers of Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and Local 18, United Gas, Coke and Chemical Workers of America, (CIO), the plaintiffs herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said plaintiffs, and that [fol. 123] the amount of security be fixed by the order allowing the appeal, and that the material parts of the record, proceedings and papers upon which said final judgment was based duly authenticated be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, (S.) Max Raskin, Attorney for Plaintiffs-Appellants, 606 West Wisconsin Avenue, Milwaukee, Wisconsin.

[fol. 124] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed August 8, 1950

The plaintiffs in the above entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final judgment of the District Court entered on June 14th, 1950.

The District Court erred:

1. In holding and concluding that the causes of action in both actions being the same and the parties being identical or in privity, the judgment of the circuit court of Milwaukee County, as affirmed by the Supreme Court of Wisconsin, is *res judicata* and conclusive on the parties not only as to all the issues adjudicated in that action but as to all issues pertaining to the constitutionality of the statute as applied to the plaintiffs that might have been [fol. 125] raised.

2. In holding and concluding that the declaratory judgment of the circuit court of Milwaukee county, introduced into the record in this case, is *res judicata* as to all the issues sought to be raised in this action and consequently bars the maintenance of this action.

3. In failing to declare invalid Sub-chapter III, Chapter 111 Wisconsin Statutes 1947, and to enjoin its enforcement.

Wherefore, the plaintiffs pray that the final judgment of the District Court be reversed, and for such other relief as the Court may deem fit and proper.

(S.) Max Raskin, Attorney for Plaintiffs, 606 West Wisconsin Avenue, Milwaukee, Wisconsin.

[fol. 126] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 8, 1950

Arthur St. John, Chester Walczak, Al Fuhrman, Gordon Donnelly, Emil Heimsch, Thomas Lansing, John F. Sheehan, E. F. Regner, Edward P. Regan, La Moine S. Cardinal, Individually, and as officers of Local 18, United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organization, and Local 18, United Gas, Coke and Chemical Workers of America, (CIO), having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment of this court in this cause entered on June 14th, 1950, and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States in such cases made and provided,

[fol. 127] Now Therefore, It Is Hereby Ordered that said appeal be and the same is hereby allowed as prayed for.

It Is Further Ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of Two Hundred Fifty Dollars ($250.00) with good and sufficient surety, and shall be conditioned as may be required by law.

It Is Further Ordered that citation shall issue in accordance with law.

(S.) Robert E. Tehan, Judge of District Court of the United States.

Dated Aug. 8, 1950.

[fols. 128-129] Citation in usual form showing service on Thomas E. Fairchild, filed Aug. 11, 1950, omitted in printing.

[fol. 130] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

NOTICE OF APPEAL—Filed August 11, 1950

To Wisconsin Employment Relations Board, L. E. Gooding, J. E. Fitzgibbon and Henry C. Rule, Individually and as Commissioners Constituting the Wisconsin Employment Relations Board, and Thomas E. Fairchild, Individually and as Attorney General of the State of Wisconsin, and the Milwaukee Gas Light Company, a Wisconsin Corporation:

You Are Hereby Notified that the plaintiffs above named hereby appeal to the Supreme Court of the United States, from the judgment entered in the above entitled action on the 14th day of June, 1950, dismissing the complaint of the plaintiffs, and from the whole thereof.

Max Raskin, Attorney for Plaintiffs, 606 West Wisconsin Avenue, Milwaukee, Wisconsin.

Dated Aug. 3, 1950.

[fols. 131-135] Bond on appeal for $250.00, filed Aug. 11, 1950, omitted in printing.

[fol. 136] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

DESIGNATION OF PARTS OF RECORD TO BE TRANSMITTED—Filed August 8, 1950

To the Clerk of the District Court for the Eastern District of Wisconsin:

You will please prepare a transcript of the record in the above entitled cause, to be transmitted to the Clerk of

the United States Supreme Court, and include in such transcript the following:

1. Amended Complaint.
2. Order to Show Cause.
3. Answer of Defendant, Milwaukee Gas Light Company.
4. Answer of State Official Defendants.
5. Second Stipulation.
6. Judgment of the Circuit Court of Milwaukee County.
7. Majority and Minority Opinions.
8. Findings of Fact and Conclusions of Law.
9. Judgment.

(S.) Max Raskin, Attorney for Plaintiffs, 606 W. Wisconsin Avenue, Milwaukee, Wisconsin.

Dated Aug. 3, 1950.

[fol. 137] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

[Title omitted]

STIPULATION TO AMEND DESIGNATION OF PARTS OF RECORD ON APPEAL—Filed September 5, 1950

It Is Hereby Stipulated by and between the parties, by their respective attorneys, that the "Designation of Parts of Record to Be Transmitted" be amended as follows:

Strike the word "Judgment" where it appears in the Item 6 and insert in its place the word "Decision"; and after the word "County" in the same item insert the words "Original Exhibit", so that item 6 will then read:

"6. Decision of the Circuit Court of Milwaukee County, Original Exhibit."

Max Raskin, Attorney for Plaintiffs; Beatrice Lampert, Attorney for Wisconsin Employment Relations Board, et al.; J. G. Hardgrove, Miller, Mack & Fairchild, Attorneys for Milwaukee Gas Light Co.

[fol. 138] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 139-140] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed September 22, 1950

Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of Errors heretofore filed.

Appellant designates the entire record, as filed in the above entitled case, for printing by the Clerk of this Court.

Max Raskin, Attorney for Plaintiffs-Appellants.

[fol. 141] [File endorsement omitted.]

[fol. 142] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

ORDER NOTING PROBABLE JURISDICTION—October 23, 1950

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Endorsed on Cover: Enter Max Raskin. File No. 54808. E. Wisconsin, USDC. Term No. 302. Arthur St. John, Chester Walczak, Al Fuhrman, et al., etc, Appellants, vs. Wisconsin Employment Relations Board, L. E. Gooding, et al., etc. Filed September 11, 1950. Term No. 302 O. T. 1950.